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## Chapter 1

# Introduction

The Fair Trade Commission (FTC) compiles cases to lay out its practices and the practices of the courts regarding the Fair Trade Law (FTL) in the past years.

### **Coverage of this Book**

This book compiles 57 selected typical cases decided by the FTC in 2007, and 2 judicial cases decided by Taipei Supreme Administrative Court. In addition to this Chapter, the chapter arrangements of this compilation are as follows:

- Chapter 2 compiles 1 case on monopoly, which are defined in Article 5 and regulated by Articles 5, 5-1 and 10 of the Fair Trade Law.
- Chapter 3 compiles 14 cases on merger, which are defined in Article 6 and regulated by Articles 6, 11, 11-1, 12 and 13 of the Fair Trade Law.
- Chapter 4 compiles 5 cases on concerted actions (cartels), which are defined in Article 7 and regulated by Articles 14, 15, 16 and 17 of the Fair Trade Law.
- Chapter 5 compiles 2 cases on unfair competition, which is related to resale price maintenance and regulated by Article 18 of the Fair Trade Law.
- Chapter 6 compiles 4 cases on unfair competition, which is related to lessening competition or impeding fair competition and regulated by Article 19 of the Fair Trade Law.]
- Chapter 7 compiles 2 cases on counterfeiting commodities or trademarks, which are regulated by Article 20 of the Fair Trade Law.
- Chapter 8 compiles 12 cases and 1 judicial case on false, untrue and misleading advertisements, which are regulated by Article 21 of the Fair Trade Law.
- Chapter 9 compiles 1 case on damaging others' business reputation, which is regulated by Article 22 of the Fair Trade Law.

- Chapter 10 compiles on 5 cases and 1 judicial case of multi-level sales, which are defined in Article 23 and regulated by Articles 23, 23-1, 23-2, 23-3 and 23-4 of the Fair Trade Law.
- Chapter 11 compiles 11 cases on other deceptive or obviously unfair conducts, which are sufficient to affect trading order, and therefore deemed to be a violation of Article 24 of the Fair Trade Law.

## Chapter 2

# Monopoly

### **Koninklijke Philips Electronics, N.V.**

791st Commissioners' Meeting (2007)

Case: Koninklijke Philips Electronics, N.V. was complained for violating the Fair Trade Law by conducting illegal patent licensing acts when selling recordable DVD (including DVD-R and DVD+R) to domestic companies

Key Words: DVD-R, DVD+R, patent license

Reference: Fair Trade Commission Decision of January 4, 2007 (the 791st Commissioners' Meeting); Letter (96) Kung Er Tzu No. 0960000150 issued on January 5, 2007

Industry: Data Storage Media Units Manufacturing (2740)

Relevant Laws: Articles 10,19(ii), and 19(vi) of the Fair Trade Law

#### Summary:

1. Koninklijke Philips Electronics, N.V. (hereinafter called "Philips") was complained for violating Articles 10, 19(ii) and 19(vi) of the Fair Trade Law (FTL) by conducting illegal patent licensing acts when selling recordable DVD (including DVD-R and DVD+R) to domestic companies. After this case was investigated and submitted to the Commissioners' Meeting for resolution, not in violation of the FTL was found upon current evidence.

#### 2. Grounds for Disosition:

(1) The technologies required to produce the DVD-R/+R could be classified into two major systems: DVD-R and DVD+R. This distinction is based on the different development of each standard. It is important to note that, other than the patented technologies of Philips, the DVD-R and DVD+R standards are also provided by Sony, Hewlett Packard, Pioneer, Yamaha, Ricoh, Mitsubishi Chemistry, AOL, Hitachi, IBM, Mitsubishi, Panasonic, Toshiba, and JVC. Said companies all have relevant patents of

DVD-R/+R and are engaged in relevant patent license. Philips is merely one of the patent licensors. Also, the patented technologies of the other licensors are also critical to the production of DVD-R/+R. Therefore, licensees would still have to obtain license from not only Philips but also all other licensors to manufacture the said products. As a result, Philips would still have to compete with other enterprises and have no power to eliminate competition. Since Philips is not a monopoly, Article 10 of the FTL shall not apply.

(2) The complainant complained about the way that Philips set price for the royalty being based on considerations unrelated to trade, such as “whether it is easy to negotiate (degree of obedience)” or “whether the rights to object or complain are waived.” However, the Fair Trade Commission (FTC) requested the complainant to provide specific evidence to prove the aforesaid circumstances but had never received any response from the complainant. Therefore, the FTC could not confirm the aforesaid complaints. In addition, the FTC asked domestic manufacturers of the products in question for opinions. None of the businesses confirmed the aforesaid complaints about Phillips. As a result, the FTC was not able to confirm the accused in violation of Article 19(ii) of the FTL.

(3) It was found that Philips had retained an independent and external expert to evaluate whether the patent in question was a necessary patent to fabricate the products in question. In the event that said expert should find any patent inconsistent with the “necessary patent” set forth in the contract, Philips shall delete such patent from the patent list (and the relevant patents obtained by other countries) pursuant to the contract in question. Since Philips had provided relevant mechanism to ensure that the patent list in question encompassed every necessary patent, the action it took shall be deemed appropriate. Furthermore, a patentee’s act of package licensing regarding all necessary patents for one product could surely bring positive economic benefits such as decreasing trading and negotiation costs and avoiding litigation. Such an act has also been practiced in the market of patent license. Therefore, Philips’ act of package licensing shall be appropriate and not in violation of Article 19(vi) of the FTL.

# Chapter 3

## Merger

### 3.1 DECISIONS

#### **Fuyang Media Co. Ltd.**

819th Commissioners' Meeting (2007)

Case: Fuyang Media Co., Ltd. violated the Fair Trade Law by failing to file pre-merger notifications regarding its intention to merge with North Coast Cable TV Corp., Mangrove CATV Corp., Yeong Jia Leh Cable TV Co., Ltd., and Shin Ho Cable TV Co. Ltd.

Key Words: cable TV, joint operation, direct control, appointment or discharge of personnel

Reference: Fair Trade Commission Decision of July 19, 2007 (the 819th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096124

Industry: Cable and Other Subscription Programming (6022)

Relevant Laws: Articles 11(1), 13(1) and 40(1) of the Fair Trade Law

#### Summary:

1. The Fair Trade Commission (FTC) respectively received the complaints from the general public against the current North Coast Cable TV Corp. (hereinafter referred to as "North Coast") and Mangrove Cable TV Corp. (hereinafter referred to as "Mangrove"), both of the enterprises were located in Danshuei Township, Taipei County. When the general public phoned Mangrove to make an installation request, such a company informed that the area of installation fell within the business territory of North Coast and it could not step in such a territory for service. Nevertheless, when they phoned North Coast for cable TV installation applications, the installation staffs yet provided the dispatch list of Mangrove. Additionally, as for the current Yeong Jia Leh Cable TV Co., Ltd. (hereinafter referred to as "Yeong Jia Leh") and Shin Ho Cable TV Co. Ltd. (hereinafter referred to as "Shin Ho") in Hsinchuang Township, Taipei County, when the general public phoned Yeong Jia Leh, such a company

informed them to call the other telephone number; unexpectedly the receiver of the call was the staff of Shin Ho. The enterprises had indicated, in the same way, that lines of communication had not been set up in certain areas and therefore, they were unable to provide services. Nevertheless, they in fact removed the original lines instead. Therefore, the FTC immediately conducted investigations on two cases: the one case in Danshuei Township, Taipei County and the other one Hsinchuang Township of the same county.

2. Findings of the FTC after investigation:

(1) Fuyang Media Co. Ltd. (hereinafter referred to as “Fuyang”) filed a pre-merger notification to the FTC for owning 74% shareholding of North Coast in 2002 and the FTC held that it did not prohibit the merger. Additionally, Fuyang controlled the business operation and personnel appointment and dismissal of Mangrove directly or indirectly by taking on all of the positions as directors and supervisors in Mangrove from February 17 to June 1, 2003. As a result, Fuyang shall file a pre-merger notification, but it did not; it in violation of Article 11(1) of the Fair Trade Law (FTL) and had undergone a disciplinary action in accordance with the resolution passed in the 646th Commissioners’ Meeting on March 25, 2004. However, it was found that on December 31, 2004, Fuyang, on behalf of Mangrove, concluded “Agreements on Transmission of Basic Frequency Channels” and “Agreements on Public Transmission of Cable TV” with related channels providers (agents), Tung Ho Multimedia Co. Ltd. and Chung T’ien Television, for the first half of the year 2005; and Fuyang which received a majority vote to take on the positions as directors and supervisors in Mangrove, sent its staffs to hold these concurrent positions in April 2005. Substantially, Fuyang still retained control over Mangrove; it could directly or indirectly control the business operation and personnel appointment and dismissal of it. Therefore, Fuyang did not modify its acts or adopt necessary correction measures in accordance with FTC Disposition (94) Kung Ch’u Tzu No. 093034 dated March 26, 2004.

(2) Fuyang controlled the business operation and personnel appointment and dismissal of Shin Ho directly or indirectly by taking on all of the positions as

directors and supervisors in Shin Ho from March 12 to July 7, 2003. As a result, Fuyang must file a pre-merger notification but it did not; it in violation of Article 11(1) of the FTL and had undergone a disciplinary action in accordance with the resolution passed in the 646th Commissioners' Meeting on March 25, 2004. However, it was found that Hsin Ho's and Yeong Jia Leh 's staffs were working in the same place and Hsin Ho's facilities in the head control room was not yet in full operation. In the same way, it was found that on December 31, 2004, Fuyang, on behalf of Hsin Ho, concluded "Agreements on Transmission of Basic Frequency Channels" and "Agreements on Public Transmission of Cable TV" with related channels providers (agents), Tung Ho Multimedia Co. Ltd. and Chung T'ien Television, for the first half of the year 2005; and Fuyang which received a majority vote to take on the positions as directors and supervisors in Hsin Ho, sent its staffs to hold these concurrent positions in April 2005. Substantially, Fuyang still retained control over Hsin Ho; it could directly or indirectly control the business operation and personnel appointment and dismissal of it. Therefore, Fuyang did not modify its acts or adopt necessary correction measures in accordance with FTC Disposition (94) Kung Ch'u Tzu No. 093034 dated March 26, 2004.

3. Grounds for Disposition:

(1) In accordance with the findings of the FTC, after Fuyang underwent a disciplinary action in accordance with the FTC's Disposition (94) Kung Ch'u Tzu No. 093034 dated March 26, 2004, it still directly and indirectly controlled the business operations or appointment or dismissal of personnel of Mangrove and Shin Ho but did not modify its acts or adopt necessary correction measures in accordance with the content of the aforesaid Disposition. Hence, Fuyang in violation of Article 11(1) of the FTL.

(2) After considering the operating revenue of Fuyang, motive of the unlawful acts of Fuyang, the degree of the unlawful acts' harm to market order, the benefits derived on account of the unlawful acts, the intervals between past violations and the attitude after the investigation, the FTC ordered Fuyang to move the related staffs to other positions which held no substantial control over Fuyang, Mangrove and Shin Ho,

other than the original positions, 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 FTL. An administrative fine of New Taiwan Dollars (NT\$) 4,000,000 was imposed for each of the two cases.

Appendix:

Fuyang Media Co. Ltd.'s Uniform Invoice Number: 16741402

Summarized by Chang, Hsin-yi; supervised by Chiang, Kuo-lun

## **Nation Petroleum Corp.**

827th Commissioners' Meeting (2007)

Case: Nation Petroleum Corp. violated the Fair Trade Law by failing to file a pre-merger notification to the FTC regarding its intention to control the business operation and employment or discharge of personnel of Formosa

Key Words: failing to file a pre-merger notification, specific market, promotion

Reference: Fair Trade Commission Decision of September 13, 2007 (the 827th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096148

Industry: Gasoline Stations (4821)

Relevant Laws: Articles 6(1), 11(1), 13(1) and 40(1) of the Fair Trade Law

Summary:

1. This case was originated from the newspaper reporting that: Two large oil station management organizations, National Petroleum Corporation (hereinafter referred to as "National Corporation") and Formosa (hereinafter referred to as "Formosa"), would form a "Formosa Petroleum Alliance" with 300 petrol stations. They planned to change their trademarks for a new business in July and make

two-way uses of 1,550,000 membership cards and 550,000 co-branded cards and allow accumulation of points. As National Corporation and Formosa were all large-scale group enterprises, the Fair Trade Commission (FTC) conducted an *ex officio* investigation to find whether their acts constituted a violation of the related provisions of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) In accordance with the organizational structure of National Corporation, the managing director of National Corporation managed the “business office” and “management office.” The director of National Corporation, Tsai, Chia-chang, held a concurrent post as the managing director of the same company since October 17, 2000 when he was elected to serve as the managing director at the primary election. Until now, he has renewed his term of office since the primary election. Each term of office is three years and currently, his term of office expires on July 1, 2009. National Corporation held the 4th Meeting of the 8th Term of board of directors meeting on March 30, 2007 and it resolved that in order to meet the needs of the company's business, it rescinded the non-compete restraint placed on the managing director; it also permitted Tsai, Chia-chang to hold a concurrent post as the managing director of Formosa engaging s in similar businesses; in the same way, these news would be announced in the Market Observation Post System in accordance with law. Furthermore, Formosa also held a board of directors meeting on March 29, 2007 and resolved that the original managing director would be released from office and the company recruited Tsai, Chia-chang to be its new managing director. The resolution became effective since April 1, 2007; Tsai, Chia-chang would not be paid during the employment, and was in an unlimited term of office.

(2) The material message shown in the Market Observation Post System of Taiwan Stock Exchange was that National Corporation made an announcement on March 30, 2007 that the managing director, Tsai, Chia-chang, held a concurrent post as the managing director of Formosa engaging in similar businesses; and it made the second important announcement on May 9 and 10 that it planned to file a pre-merger notification to the FTC regarding its intention to merge with Formosa. However, the

Commission did not receive the documents on merger application.

3. Grounds for Disposition:

(1) In accordance with the text on the merger type set forth in Article 6(1)(v) of the FTL, which provides that “directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise,” “the director held a concurrent post as” was one of the aforesaid merger types. In addition, the evaluation of the controlling relationship between enterprises of the merger is divided into three parts, “legal control,” “substantial control” and “substantial effects.” Since the legal control is quite clear, the standard of substantial control or substantial effects between enterprises must be evaluated on a case-by-case basis, especially in the circumstance that the shareholding of a company does not reach the threshold or the number of directors does not reach a certain ratio. The merger relationship in terms of substantial effects or substantial control may still exist among enterprises. Without the legal control over Formosa in terms of holding the shares of Formosa or the appointment of directors in Formosa, the managing director of National Corporation, Tsai, Chia-chang, who served as the managing director of Formosa, had substantial effects on and decisions over the business operation or policies of Formosa.

(2) It was found that on April 1, 2007, Formosa recruited the director of National Corporation, Tsai, Chia-chang, who held a concurrent post as the managing director of the same company, as Formosa’s managing director, and the provisions related to such an employment and rescission of non-compete practice were passed in terms of the resolutions of the boards of directors of the two companies on March 29 and 30, 2007 respectively. The managing director of National Corporation managed the office of the managing director, management headquarters and business headquarters; Formosa's managing director was responsible for the manager office (management office and facility office), operation office (the business office in each area) and of accounting. These affairs had in fact covered the business and personnel affairs of the two companies, including purchasing and acquisition, targets of sale and decisions over conditions of business transactions, as well as employment of administrative staff in the status equivalent to or higher than the status of a main manager. Thus, the

operations which made the managing director to have key operation strategies sufficient to affect the enterprises or manage the companies successfully or unsuccessfully were very apparent. It was clear that this type of control over a specific enterprise, holding a concurrent post as the managing director, fell under the merger type set forth in Article 6(1)(v) of the FTL.

(3) Furthermore, in accordance with Article 7 of the Enforcement Rules to the FTL, the controlling business shall file a pre-merger notification to the FTC for the merger type, “where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.” In the same way, in accordance with Article 11(1)(iii) of the FTL, the amounts of the sales of National Corporation and Formosa in 2006 all exceeded the threshold promulgated by the FTC; therefore, National Corporation in this case shall file a pre-merger notification to the Commission prior to its merger with Formosa. Nevertheless, it did not.

(4) It was further found that, after Tsai, Chia-chang held a concurrent post as Formosa's managing director on April 1, 2007, the promotion programs executed by National Corporation and Formosa respectively in the preceding season (until June 30, 2007), the reduction of price for a co-branded card, application and handling of the premium by swiping a new card for the first time, price-reduction scheme for refilling the petrol in cash in regular days, and types of gifts, were different. Nevertheless, since the third season dated July 1, 2007, the joint promotions of the two companies on the membership day, the reduction of price within one day or accumulation of points, the refund by swiping a new card for the first time, accumulation of points in regular days and gift fly sheets, all proceeded in the same pace and gradually became alike. Even if the two companies, in name only, had no joint promotions, unified marks on products and services, and activities on exchange of stockholding, the competitive relationship between both parties regarding marketing in the channeling market had already been affected substantially.

(5) In conclusion, through the means of holding concurrently as Formosa's managing director, National Corporation directly and indirectly controlled the business operation or the appointment or discharge of personnel of Formosa since April 1, 2007 and this type of merger fell under the merger type set forth in Article

6(1)(v) of the FTL. In addition, it was very clear that their integration of promotions and the harm caused to the level of competition in the channel market had constituted a merger. The amounts of the sales of National Corporation and Formosa in the last accounting year all exceeded the threshold promulgated by the Commission, but National Corporation did not file a pre-merger notification to the Commission prior to its merger with Formosa – it in violation of Article 11(1)(iii) of the FTL. The FTC therefore ordered National Corporation to supplement a pre-merger notification or adopt necessary corrections within three months of the second day upon the arrival of this Disposition in accordance with Articles 13(1) and 40(1) of the FTL and imposed it with an administrative fine of New Taiwan Dollars (NT\$) 1,000,000.

Appendix:

Nation Petroleum Corporation's Uniform Invoice Number: 2295890

Summarized by Yang, Chia-hui; supervised by Lin, Kin-lan

## 3.2 NON-PROHIBITED CASES

### **Lite-On IT Corporation & Philips BenQ Digital Storage Inc.**

796th Commissioners' Meeting (2007)

Case: Lite-On IT Corporation filed a pre-merger notification regarding its intention to merge with Philips BenQ Digital Storage Inc.

Key Words: economic benefit, competition restraint, merger

Reference: Fair Trade Commission Decision of February 8, 2007 (the 796th Commissioners' Meeting)

Industry: Other Computer Peripheral Equipment Manufacturing (2719)

Relevant Laws: Articles 6, 11 and 12 of the Fair Trade Law

#### Summary:

1. Lite-On IT Corporation (hereinafter referred to as "Lite-On") planned to acquire 49% shares of Philips BenQ Digital Storage Inc. (hereinafter referred to as "Philips BenQ") and filed a pre-merger notification to the Fair Trade Commission (FTC) in accordance with the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: The merger type fell under the description set forth in Article 6(1)(ii) of the FTL "where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise." In addition, Lite-On and Philips BenQ both had a sales amount exceeding the threshold amount publicly announced by the FTC in 2005. Pursuant to Article 11(1)(iii) of the FTL, this merger shall be filed with the FTC. Furthermore, in accordance with Article 7(1)(ii) of the Enforcement Rules To The FTL, this merger shall be reported by an enterprise acquiring shares of another enterprise, which was Lite-On in this case. Therefore, the FTC accepted the pre-merger notification.

3. After the merger in question, both enterprises would still be subject to market competition. It was difficult to say that the enterprises of the merger would have the

ability to unilaterally raise product prices or service remuneration. Moreover, beside ASUS, Quanta, and other small-scale companies, there are also other Japanese and Korean multinational enterprises or joint-venture enterprises participating in the competition. Thus, the market structure would not have conspicuous changes. On the other hand, there was no obvious evidence showing that the enterprises of the merger in question and their competitors would be able to mutually restrain one another's business operations or take concerted actions to eliminate competition in the market. Additionally, no entry barriers would be created, and the trading counterparts or potential trading counterparts would still have a strong ability to bargain with the enterprises of this merger and cause them to raise the product prices or service remuneration. As a result, the FTC found that the overall economic benefits brought by the merger of Lite-On and Philips BenQ would outweigh the disadvantage resulting from the competition restraints. The FTC therefore approved the pre-merger notification in accordance with Article 12 of the FTL.

Appendix:

Lite-On IT Corporation's Uniform Invoice Number: 16839221

Philips BenQ Digital Storage Inc.'s Uniform Invoice Number: 80357874

Summarized by Yeh, Su-Yen; Supervised by Liou, Chi-Jung

## **Chunghwa Telecom Co., Ltd. & SENA International Co., Ltd.**

803rd Commissioners' Meeting (2007)

Case: Chunghwa Telecom Co., Ltd. filed a pre-merger notification to the FTC regarding its intention to merge with SENA International Co., Ltd.

Key Words: competition restraint, mobile phone

Reference: Fair Trade Commission Decision of March 29, 2007 (the 803rd Commissioners' Meeting)

Industry: Telecommunications (6100)

Relevant Laws: Articles 6, 11 and 12 of the Fair Trade Law

Summary:

1. Chunghwa Telecom Co., Ltd. (hereinafter referred to as “Chunghwa Telecom”) is a Type I and II telecommunications enterprise whose major businesses are fixed network communications, mobile communications, data communications, and satellite communications services. SENA International Co., Ltd. (hereinafter referred to as “SENAO”) is mainly an agency selling foreign and domestic mobile communication products and peripherals. Chunghwa Telecom planned to directly control the business operation and personnel appointment of SENAO by acquiring 31.5% shares of SENAO. Chunghwa Telecom's intention fell under the description of the merger type set forth in Article 6(1)(v) of the Fair Trade Law (FTL). In addition, currently Chunghwa Telecom has a significant market share of 36% in the mobile phone business market. Chunghwa Telecom and SENAO’s sales amount for the previous fiscal year exceeded the threshold amount of filing a pre-merger notification publicly announced by the Fair Trade Commission (FTC). Therefore, Chunghwa Telecom filed a pre-merger notification to the FTC in accordance with Article 11(1) and (2) of the FTL.

2. According to the FTC, the merger of Chunghwa Telecom and SENAO would not cause obvious changes to the market structure or concentration of the relevant markets. Both Chunghwa Telecom and SENAO could not significantly increase their market power by means of the merger. Additionally, the merger in question would not create a conspicuous obstacle for other enterprises to enter specific markets and would not have an effect on the likelihood for the competitors to trade with their trading counterparts. As a result, the FTC found that the advantage of the overall economic benefits brought by the merger of Chunghwa Telecom and SENAO would outweigh the disadvantage resulting from the competition restraints and therefore approved the pre-merger notification in accordance with Article 12 of the FTL.

**Appendix:**

Chunghwa Telecom Co., Ltd.'s Uniform Invoice Number: 96979933

SENAO International Co., Ltd.'s Uniform Invoice Number: 12228473

Summarized by Tsai, Hui-Chi; Supervised by Chiang, Kou-Lun

## **Japan Tobacco Inc. & Gallaher Group Plc**

803rd Commissioners' Meeting (2007)

Case: Japan Tobacco Inc. filed a pre-merger notification to the FTC regarding its intention to acquire shares of Gallaher Group Plc

Key Words: extraterritorial merger, horizontal competition, entry barrier

Reference: Fair Trade Commission Decision of March 29, 2007 (the 803rd Commissioners' Meeting)

Industry: Tobacco Manufacturing (1000)

Relevant Laws: Article 6(1)(ii) and (v), 11(1)(ii) and 12 of the Fair Trade Law

Summary:

1. Japan Tobacco Inc. (hereinafter referred to as "JT") planned to acquire 100% shares of Gallaher Group Plc (hereinafter referred to as "Gallaher") through its 100% owned subsidiary, JTI (UK) Management Ltd. JT's intention fell under the merger type set forth in Article 6(1)(ii) and (v) of the Fair Trade Law (FTL). Since JT's products have one-fourth of market share in the domestic tobacco market, JT filed a pre-merger notification to the Fair Trade Commission (FTC) in accordance with Article 11(1)(ii) of the FTL.

2. Findings of the FTC after investigation: Since both JT and Gallaher are foreign enterprises, the merger in question is subject to extraterritorial merger. However, both companies sell products through their subsidiaries or agents domestically and engage

in horizontal competition with each other. Since 2002, JT has had more than one-third of market share in the domestic tobacco market taking either number one or two sales spot. As a result, the said merger would have direct, substantial, or reasonably foreseeable impact on domestic markets. The FTC therefore accepted the pre-merger notification.

3. Grounds for Disposition:

(1) JT's market share in the domestic tobacco market has been the top one or two. However, Gallaher's market share and sales amount are both low. Therefore, the merger of these two enterprises would cause no major changes to the current market share in the relevant markets. Moreover, after the exclusive sale of tobacco and alcohol was abolished in 2002, domestic tobacco market has had no high entry barriers. Currently, there are more than thousands of businesses in the market. Potential competitors may also join the market at any time. The merger of JT and Gallaher would cause no obvious decline in the number of competitors. Furthermore, each tobacco product is replaceable. These two enterprises of the merger in question would still have to compete with more than thousands of businesses and their products prices are also subject to government regulation. As a result, no conspicuous disadvantage to market competition was found to be caused by the merger in question. Additionally, the competent authority of tobacco products, Ministry of Finance, did not oppose to this merger as well.

(2) JT may obtain scale economy advantages, such as decrement in costs or expenses, through expanding its geographic market worldwide and increasing productivity and production upon the merger in question. On the other hand, currently Gallaher has very low sales amount and is not popularly known in the nation. Through the merger in question, Gallaher would be able to employ JT's current channels and image to increase its product sales channels and improve its visibility and popularity. Both enterprises of the merger would be able to improve their competitiveness and further provide better products or services and facilitate the positive competition in the domestic tobacco market upon this merger.

(3) In conclusion, the advantage of overall economy shall outweigh the

disadvantage resulting from the competition restraints after the implementation of the merger in question. The FTC therefore approved the pre-merger notification in accordance with Article 12 of the FTL and allowed the enterprises of the merger to commence with the merger from April 6, 2007.

Summarized by Lin, Hsin-Wen; Supervised by Wu, Pi-Ju

## **Yahoo! Taiwan Inc. & Wretch**

803rd Commissioners' Meeting (2007)

Case: Yahoo! Taiwan Inc. filed a pre-merger notification to the FTC regarding its intention to acquire 100% shares of Wretch in accordance with Articles 11(1)(i) and (ii) of the Fair Trade Law

Key Words: merger, Internet information providing services

Reference: Fair Trade Commission Decision of March 29, 2007 (the 803rd Commissioners' Meeting); Letter (96) Kung Jye Tzu No. 096003 issued on April 12, 2007

Industry: Web Portals (6311)

Relevant Laws: Articles 6, 11 and 12 of the Fair Trade Law

### Summary:

1. Yahoo! Taiwan Inc. (hereinafter referred to as "Yahoo!") planned to acquire 100% shares of Wretch from its current stockholders and filed a pre-merger notification to the Fair Trade Commission (FTC) in accordance with Article 11(1) and (2) of the Fair Trade Law (FTL).
2. Based upon the definition of "Internet information providers" given by the competent authority of electronic commerce, the Ministry of Economic Affairs, Yahoo! is a web portal providing comprehensive internet services; while Wretch is simply a community website. What both websites have in common is that both

companies' revenues are from their membership fees and from the online advertisements through the service of web communities. Since Wretch is not involved with online shopping and online auction and more than 70% of the users are also Yahoo's members, the merger would not affect the markets of online shopping and online auction much. Moreover, in light of the current website operating mode, website operators mostly provide free services and information to attract users to visit their websites. By gathering large amount of potential consumers, website operators try to make profits from attracting advertisement agencies or advertisers to place advertisements on their websites. Therefore, these websites are of the nature of online media. The FTC felt that the number of visits depended on the quantity of web pages and contents provided by the website operators and determined by the number of potential consumers gathered by the websites, and therefore, a key point to be taken into accounts by the advertisement agencies or advertisers. However, the actual value of the number of visits still requires to be finally realized through trade. The major income of online media is from online advertisements. Users hop easily from one website to another upon the difference of the website services and quality. As a result, the income from online advertisements shall be considered as an important reference when calculating the market share. Since there is no such official statistics of the domestic market sales, the FTC referred to the information published by the Brain magazine and the Internet Advertising and Media Association of Taipei (IAMA). From said information, Yahoo! had 57% to 59.54% market share while Wretch had 1.67% to 1.75% market share.

3. After holding seminars with relevant authorities, scholars and Internet business operators, interviewing downstream advertisement agencies, and asking advice of the competent authority, the FTC found that the merger of Yahoo! and Wretch should not be able to conspicuously change the current market structure. In addition, since that website operation is not restricted by laws, technology and capital and that the Internet technology continues to improve, new Internet media can challenge the existing businesses at any time with diverse and innovated operating modes. Besides, after the global leading search engine, Google, officially participated in the domestic

market in January 2007, more diverse Internet media operating modes will be created. Then, telecommunications and digital television businesses could all possibly become potential competitors. As a result, the merger of Yahoo! and Wretch should cause no obvious disadvantage of competition restraints to the relevant market structure and competition. The FTC therefore approved the merger in accordance with Article 12(1) of the FTL. However, in order to avoid the applicant from engaging in competition restraints and exploiting its market position through such merger and to assure that the advantage of overall economic benefits would outweigh the disadvantage resulting from the competition restraints, the FTC, in accordance with Article 12(2) of the FTL, additionally requested that the merger applicants shall not employ the market position after the merger to improperly obstruct other competitors' website links, email receipt and transmittal, or other services; or restrict trading counterparts to trade or not to trade with specific enterprises; or improperly decide on, maintain or alter prices; or request trading counterparts to exclusively trade with the applicant; or impede other enterprises' fair competition; or other actions exploiting the applicant's comparatively advantageous position in the market.

Appendix:

Yahoo! Taiwan Inc.'s Uniform Invoice Number: 70468838

Summarized by Hsu, Cho-Yuan; Supervised by Chiang, Kou-Lun

## **CitiBank & Overseas Chinese Bank**

811th Commissioners' Meeting (2007)

Case: CitiBank filed a pre-merger notification regarding its intention to merge with Overseas Chinese Bank in terms of Article 11 of the Fair Trade Law

Key Words: banks, merger, pre-merger notification, market share

Reference: Fair Trade Commission Decision of May 24, 2007 (the 811th Commissioners' Meeting)

Industry: Banks (6412)

Relevant Laws: Article 11 of the Fair Trade Law

### Summary:

1. This case being originated from the facts that through the channel of the shareholding subsidiary (Citibank Overseas Investment Corp., hereinafter referred to as "COIC"), CitiBank planned to establish a subsidiary (it was temporarily named as Citi Group Global Commercial Bank hereinafter referred to as "Citi Global Bank") in domestic banking market; then Citi Global Bank and Overseas Chinese Bank merged into one. After the reorganization was done, and Citi Global Bank remained unchanged and all operations of Overseas Chinese Bank were terminated; the merger fell under the type set forth in Article 6(1)(i) of the Fair Trade Law (FTL). Additionally, the sales for the preceding fiscal year of Overseas Chinese Bank and the enterprises in the domestic market, which had a subordinate relationship with CitiBank, respectively, exceeded the threshold amount publicly announced by the Central Competent Authority as stipulated by Article 11(1)(iii) of the FTL, and they did not fall within the circumstances set forth in Article 11(1). Therefore, the parties filed a pre-merger notification to the Fair Trade Commission (FTC).

2. The FTC pointed out that the main concern of the merger case is its impacts on domestic banking market competition. However, in term of the information promulgated by the Financial Supervisory Commission, Executive Yuan, there are numerous banks in the domestic market such that the market share of each enterprise

is low, the industry is extremely competitive, and hence the market can be considered lowly-concentrated. After examining the merger of the enterprises, the FTC found that the market share of the enterprises of the merger does not change much and it will still fall under restraint of market competition; and it has no ability to raise prices of products or service remuneration. In the same way, there is a quite limited alteration of the market structure and the merger does not harm the competition amongst existing enterprises, the new competitor can compete immediately in the market after conforming to relevant laws and regulations. If the trading counterpart is a large-scale group company, the trading counterpart has quite a counterbalance power against the raise of prices of products or service remuneration of the enterprises of the merger. In other words, the merger of the Citi Global Bank and the Overseas Chinese Bank has not significantly harmed the competition of the relevant market and it is beneficial to the overall economy as a whole. Therefore, Article 12(1) of the FTL does not prohibit such a merger.

Summarized by Tsao, Hui-Wen; Supervised by Chen, Yuhn-Shan □

## **MiTAC International Corporation & Tyan Computer Corporation**

811th Commissioners' Meeting (2007)

Case: MiTAC International Corporation filed a pre-merger notification to the

FTC regarding its intention to merge with Tyan Computer Corporation

Key Words: economic benefits, competition restraint, merger

Reference: Fair Trade Commission Decision of May 24, 2007 (the 811th  
Commissioners' Meeting)

Industry: Other Computer Peripheral Equipment Manufacturing (2719)

Relevant Laws: Articles 6, 11 and 12 of the Fair Trade Law

Summary:

1. MiTAC International Corporation (hereinafter referred to as “MiTAC”) filed a pre-merger notification to the FTC regarding its intention to merge with Tyan Computer Corporation (hereinafter referred to as “Tyan”) in terms of the provisions of the Fair Trade Law (FTL); the reorganization would be done, and MiTAC remained unchanged.

2. Findings of the FTC after investigation: It showed that the merger in this case fell under the type, “where an enterprise and another enterprise are merged into one,” as set forth in Article 6(1)(i) of the FTL. Additionally, the threshold amount of the sales of MiTAC and Tyan in 2006 exceeded the threshold promulgated by the FTC – it had already reached the threshold for the filing of the pre-merger notification set forth in Article 11(1)(iii) of the FTL. Therefore, such a merger shall be reported to the FTC. The enterprises of the merger, MiTAC and Tyan, were the applicants in this case, and the FTC accepted to handle their application.

3. After this merger, the enterprises of the merger are still under restraint of market competition – they hardly have the ability to unilaterally raise prices of products or service remuneration. In the same way, in spite of the companies, Foxconn Electronics Inc., Wilstron Corporation, Quanta Computer Inc., Inventec Corporation, Micro-star International, AsusTeK Computer Inc. and other small companies participating in the competition, international companies, American, Japanese and Korean transnational corporations or joint ventures also participate in the competition, and they even control the technologies of middle- and high-level products. After the merger, there are still a lot of market competitors and there has not been an obvious alteration of the market structure. On the other aspect, there is no constructive evidence sufficient to regard that the enterprises of the merger and their competition may cause the anxiety that there is no competition in the market by mutual restraints of business activities or behaving consistently. In addition, new competitors have no entry barriers and the ability of trading counterparts or potential trading counterparts to counterbalance the enterprises of the merger against the raise of prices of products

or service remuneration is still high. Therefore, the overall economic benefits brought by the merger in this case would outweigh the disadvantage resulting from the competition restraints. Therefore, the FTC found that the merger of MiTAC and Tyan, in accordance with Article 12 of the FTL, was not prohibited.

Appendix:

MiTAC International Corporation's Uniform Invoice Number: 44255708

Tyan Computer Corporation's Uniform Invoice Number: 84753833

Summarized by Peng, Wei-Cheng; Supervised by Liou, Chi-Jung

## **Cathay Pacific Airways Limited Taiwan Branch & Hong Kong Dragon Airlines Limited**

812th Commissioners' Meeting (2007)

Case: Cathay Pacific Airways Limited Taiwan Branch, the enterprise in Hong Kong, filed a pre-merger notification to the FTC regarding its intention to merge with Hong Kong Dragon Airlines Limited

Key Words: aviation, Hong Kong, merger

Reference: Fair Trade Commission Decision of May 31, 2007 (the 812th Commissioners' Meeting)

Industry: Civil Air Transportation (5101)

Relevant Laws: Articles 6(1)(ii), 11(1)(ii) and 12(1) of the Fair Trade Law

Summary:

1. This case originated from the facts that in March 2007, Cathay Pacific Airways Limited Taiwan Branch, the enterprise in Hong Kong, issued a letter to its headquarters (hereinafter referred to as "Cathay Airways") to enquire whether the headquarters shall file a per-merger notification to the Fair Trade Commission (FTC)

regarding to extraterritorial merger between itself and Hong Kong Dragon Airlines Limited (hereinafter referred to as “Dragon Airlines”). After the FTC conducted studies and analysis of this case, it is found that the Cathay Airways should file a notification and relevant information to the FTC regarding to the merger in terms of Article 11(1) of the Fair Trade Law (FTL).

2. Cathay Airways and Dragon Airlines in this case provide international air transportation service at home. In terms of the provisions of “FTC Guidelines on Filing of Report Regarding to Civil Air Transportation Merger,” after considering the factors, such as the degree of substitution between different and neighboring routes, travel distance, travel time, characteristics of the passengers and the cost of travel time of each aforesaid route, Taiwan-Hong Kong (Taipei-Hong Kong, Kaohsiung-Hong Kong) and Taiwan-Macau (Taipei-Macau, Kaohsiung-Macao) routes have some degree of the replacing ability. Therefore, the relevant service market and geographical market in this case are possibly within the scope of Taiwan-Hong Kong/Macao international air transportation service market. Prior to September 28, 2006, Cathay Airways had hold 17.79% shares of Dragon Airlines; it continued to acquire the rest of the shares of Dragon Airlines on September 28, 2006, which was 82.21%. This process had resulted in that Cathay Airways held 100% shares of Dragon Airlines in total. After the merger, Cathay Airways planned to integrate the operation resources of its Taiwan Branch, including each hardware facility, consolidation of flights and human resources of two branches at the airports. In the same way, the party which filed a pre-merger notification, Cathay Airways calculated the market share in terms of the statistics on people on exit recorded by the Civil Aeronautics Administration, Ministry of Transportation and Communications, and it resulted in that the market share of the Airways was 25.86% in 2006. The merger therefore fell under the type set forth in Article 6(1)(ii) of the FTL and it was consistent with the threshold set forth in Article 11(1)(ii) of the FTL regarding to the filing of a pre-merger notification; there were no incidents that fell within the circumstances provided by Article 11(1).

3. Other than enterprises that undertook merger, China Airlines, EVA Air, Air Macau, TransAsia Airways and Madarin Airlines also provide Taiwan-Hong Kong, Taiwan-Macao air transportation services and participate in the competition. It is unlikely that this merger leads to the happening of events toward the concerted action. Related enterprises could also invest capitals and enter the related markets in this case after acquiring appropriate qualifications in terms of laws and regulations; and gradually, they would enter for operation after the negotiation on traffic rights could result in opening up air routes. Therefore the merger in this case will not harm market competition. Furthermore, consumers and traveling businesses can also, without restraint, select services provided by different airlines; therefore, the ability of trading counterparts or potential trading counterparts to restrain the enterprises of the merger on the raise of prices of products or service remuneration is still high. Therefore, the merger in this case is beneficial to both expansion of the operation scale and reduction of operation cost of the enterprises of the merger. It also provides more diverse, higher-quality services for consumers. Additionally, the overall economic benefits brought by the merger in this case would outweigh the disadvantage resulting from the competition restraints and therefore the FTC did not prohibit the merger in accordance with Article 12(1) of the FTL. The FTC also considered that no circumstances in this case have severely harmed the competition order yet, and the enterprise supplemented the pre-merger notification to the FTC; therefore, the FTC held that no disciplinary action would be taken against the enterprise. However, in order to avoid the enterprise from subsequent violation of law, the FTC provided a warning to the enterprise.

Summarized by Jan, Lih-Ling; Supervised by Chiang, Kou-Lun

**Pacific Rehouse Co., Ltd., Chinatrust Real Estate Co.,  
House Real Estate Co. Ltd., Sinyi Real Estate Inc., and Giga  
House**

821st Commissioners' Meeting (2007)

Case: Pacific Rehouse Co., Ltd., three other real estates agencies, and Giga House were complained for violating the Fair Trade Law by failing to file a pre-merger notification and concerted action application to the FTC regarding, respectively, their intentions to merge and form a concerted action, publishing an untrue advertisement and conducting a joint sale

Key Words: real estate agencies, concerted action, joint sale

Reference: Fair Trade Commission Decision of August 2, 2007 (the 821st Commissioners' Meeting); Letter (96) Kung Yi Tzu No. 0960006824 on August 9, 2007

Industry: Real Estate Agencies (6812)

Relevant Laws: Articles 6(1), 11(1),14 and 21 of the Fair Trade Law

Summary:

1. The case was originated from a complaint filed by Yungching and the complaint stated briefly as follows: Four real estates agencies, Pacific Rehouse Co., Ltd. (hereinafter referred to as "Pacific Rehouse"), Chinatrust Real Estate Co. (hereinafter referred to as "Chinatrust"), House Real Estate Co. Ltd. (hereinafter referred to as "House") and Sinyi Real Estate Inc. (hereinafter referred to as "Sinyi"), and Giga House (hereinafter referred to as "Giga") jointly manufactured the DM Handbooks on "House Information" and published the advertisements on sales of real estates. They allegedly violated the provisions of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: Giga was established on December 14, 2000. Before Fair Trade Commission Interpretation Kung-Yen-Hse-Tzu No. 012 (the joint investment act which is done by more than two existing enterprises to establish a new business is not within the scope of Article 6(1) of the FTL.) ceased to apply, it would be difficult to find that the establishment of Giga constituted in violation of Article 11(1) of the FTL. In addition, Giga was established by Sinyi, Pacific Rehouse

and Chinatrust through joint investment, and its business was the electronic information service, which integrated the real estate information online for real estate agencies' and general consumers' search and utilization – the service was to allow the circulation of the information of transactions between consumers and real estate agencies and supply and demand matching, and there was no mechanism that the members must report back the quantity of the success cases. Furthermore, the members did not need to pay other fees other than monthly charges. Nonetheless, “House Information” was the written circulation platform, and the information on houses was provided by the members of the territorial fellowship of Sinyi, Pacific Rehouse, Chinatrust and House. Both Giga and "House Information" were the channels for Pacific Rehouse and three other real estate agencies to provide the diverse services on exchange of information, so as to advance the efficiency or speed of selling real estates.

3. Due to the following reasons, the Commission found that the aforesaid cooperation did not restrain the competition on service remunerations amongst Pacific Rehouse and three other real estate agencies (or other franchise stores), nor eliminating the competition effects of other competitors that did not take part in the cooperation.

(1) After the investigation, it was found that Pacific Rehouse and three other real estate agencies did not jointly decide the amounts of service remunerations. In accordance with the content of the Membership Agreement of Taiwan's Real Estate Portal concluded between Giga and the members, these real estate agencies did not jointly decide the standard of collection of service remuneration. In the same way, the service which was supplied by Giga in this case was to integrate the information on sales of real estate of Pacific Rehouse and three other real estate agencies (or other franchise stores) through the online platform, allow real estate brokers and general consumers to search information on transactions and supply and demand matching – there was no mechanism that the members must report back the quantity of the success cases. It would be difficult to find that their brokers intended to make profits through the online platform provided by Giga, mutually supervising the quantities of

success cases or exchanging competitively sensitive information. Besides, the Membership Agreement of Taiwan's Real Estate Portal did not stipulate clauses to regulate the means of allocation and ratio of service remunerations when such service remunerations were derived from the joint sale of a real estate from different agencies. Hence, it would be difficult to find that Pacific and three other real estate agencies restrained the competition on service remuneration through jointly contracting the means of allocation and ratio of service remunerations. In addition, the service remuneration collected by Pacific Rehouse and three other real estate agencies (or other franchise stores) was all conformed to the standard stipulated by the Department of Land Administration, Ministry of Interior. Sinyi collected 1% and 4% service charges from the buyer and seller respectively; Pacific Rehouse, Chinatrust and House respectively collected 2% and 4% of a concluded price at maximum as the service remuneration from the buyer and seller, and the rates charged by Sinyi were different from the rates charged by Pacific Rehouse, Chinatrust and House respectively. In conclusion, there was still no concrete evidence sufficient to find that Pacific Rehouse and three other real estate agencies involved in contracting to jointly determine service remunerations, or restraining the competition on service remuneration through exchanging competitively sensitive information or other forms of alliances.

(2) It was further found that the three real estate agencies, Pacific Rehouse, Sinyi and Chinatrust established Giga through joint investment. House subsequently became Giga's member. The four said real estate agencies (or other franchise stores) published the information related to the sales of real estates under commission. However, the internet is an open information platform, setting up a website does not require a high standard of technique, or huge capital contribution, hence it is not difficult to enter the market. In the same way, there are many websites which provide information on real estates in the market and they compete each other, such as "Yungching," "House OL," "HouseWeb," "Real Estate Network" and "Qhouse." As there are many market participants and there is no substantial market entry barrier, it would be difficult to find that the act of cooperation amongst Pacific Rehouse and three other real estate agencies was sufficient to obstruct or eliminate other competitors who did not join the cooperation from participating in competition.

4. Furthermore, as for the part, “One agency under commission and multiple listing in four real estate agencies,” as claimed in the advertisement, it was found that the services provided by Giga were to integrate the messages on many real estate agencies' sales of real estates under commission and allow supply and demand matching, so as to allow consumers to search and utilize. In fact, Giga indeed possessed the characteristics, convergence of joint sale messages and circulation. Therefore, on the basis of the perceptions of the trading counterparts and the element which the FTC based its finding, determining whether there was an indication of joint sale on the basis of the ordinary attention paid by the general public of ordinary knowledge and experiences, it was indeed difficult to find that there were differences between the aforesaid representation or symbol and the facts and hence it was difficult for a considerable number of the general public to accept such misrepresentation or symbol. The content of the service provided by Giga was not meant that a consumer was only required to entrust one of the four real estate agencies, and he would receive services from the other three agencies to sell the real estate. In terms of the degree, this fact was indeed different from the meaning of “joint sale service” as defined in the “Explanation of Joint Sale Administered by Real Estate Agencies.” Nevertheless, the purpose of the aforesaid explanation is to regulate the real estate agencies that form an alliance or merger through the practice of joint sale and such formation results in the anti-competition effect, restraining market competition. Therefore, the joint sale service in the Explanation is to limit to the transaction types, a number of real estate agencies jointly search buyers, and the agent who looks for clients and the agent who sells houses may be from different agencies; nevertheless, it does not exhaust all transaction types. In addition, as the term, “joint sale,” still includes many reasonable interpretations, the FTC could not find that the representation or symbol at issue was false, untrue and misleading, on the basis of the difference between the contents of the services provided by Giga and the term, “joint sale,” defined in the aforesaid Explanation. Nevertheless, in order to avoid future occurrence of similar competition or trade disputes, the Commission issued a letter to request Giga to notify its members that the members should avoid using any representations or symbols which will likely mislead consumers into believing that

entrusting one real estate agency to sell a real estate will get four real estate agencies to sell it under the same commission.

Summarized by Hsu, Hsiu-feng; supervised by Liao, Hsien-chou

## **Taiwan Family Mart Co., Ltd. & Nikomart Co.**

824th Commissioners' Meeting (2007)

Case: Taiwan Family Mart Co., Ltd. filed a pre-merger notification to the FTC regarding its intention to merger with Nikomart Co.

Key Words: circulation business, convenience store

Reference: Fair Trade Commission Decision of August 23, 2007 (the 824th Commissioners' Meeting)

Industry: Retail Sale in General Merchandise Stores with Food, Beverages or Tobacco Predominating (4711)

Relevant Laws: Articles 6(1), 11(1), 11-1 and 12(1) of the Fair Trade Law

### Summary:

1. This case was originated from the facts that: Taiwan Family Mart Co. (hereinafter referred to as "Family Mart") planned to assign its operation of license chains and franchise chains to Nikomart Co. (hereinafter referred to as "Niko") and a portion of Niko regular chain stores were franchised with Family Mart in the name of Niko Mart. This type of merger fell under the type of merger set forth in Articles 6(1)(iii) and (v) of the Fair Trade Law (FTL). 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 of the merger all reached the threshold amount for the filing of the pre-merger notification as stipulated

by Article 11(1)(iii) of the FTL, and they did not fall within the circumstances set forth in Article 11(1). Therefore, the parties filed a pre-merger notification to the Fair Trade Commission (FTC) in accordance with the FTL.

2. With respect to the sales of “daily products” and “shopping products,” the chain convenience stores and supermarkets or general merchandise stores are in the high level of substitutable demand; however, with respect to “convenience products” and “emergency products,” as well as other affiliated services, such as tax and fees collection, photo developing and printing, home delivery and express, the substitutability of the chain convenience stores and other channels are relatively smaller. Therefore, the relevant products market in this case is to take general merchandize stores, supermarkets and chain convenience stores, which sell daily products, food products, drinks and cigarettes and wines, as the main products market, and take “chain convenience stores” as the “sub-market.” As for the geographic market, as a chain convenience store adopts the nationwide single price strategy (it is also that there is no differential price in different areas); even if the convenience store is located in the remote area and faces a lower level of market competition, it will still be indirectly restrained by the pressure of competition brought by the highly concentrated area of convenience stores because of the chain operation mode and single price strategy. Therefore, consumers located in the remote area can also be indirectly protected by the power of market competition. Accordingly, the relevant geographic market in this case is the entire nation.

3. It was found that the enterprises participating in the merger had 7.82% and 1.08% of the total operating revenue of the main market so the merger caused very small effects on the market structure or the concentration level; they had 18.87% and 2.62% of the total operating revenue of the chain convenience stores respectively and ranked second and fifth in such a city respectively. After the merger, Family Mart was still ranked second in the market. Therefore, there was no obvious change in the market structure prior to and after the merger, and there was no obvious deterioration in the level of market concentration. After the merger, the enterprises participating in

the merger were still under the restraint of the power of market competition, and could not arbitrarily raise prices; therefore, unilateral effects were not obvious. In addition, the differences between each enterprise' market share in either the main market or submarket were very large; in the same way, the market competition was vigorous and the said enterprises were more difficult to form an joint agreement or collaborate surreptitiously. Therefore, the merger in this case would not have obvious joint effects. Besides, there are no special laws and orders or technical barriers to regulate or be against the newly established shops of retailers. The number of the shops in the forms of these general merchandise shops, supermarkets or convenience stores is increased by approximately 450 this year and potential competitors can competitively pressurize the existing enterprises.

4. 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, it would also avoid the reduction of 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 for Family Mart to adequately amplify the benefits and effects of economic scales and effectively lower the operation cost. Therefore, the FTC found that the merger in this case would not cause substantial harms 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 FTL, the FTC does not prohibit the merger of Family Mart and Niko.

Appendix:

Taiwan Family Mart Co., Ltd.'s Uniform Invoice Number: 23060248

Nikomart Co.'s Uniform Invoice Number: 22853777

Summarized by Yang, Chung-lin; supervised by Liao, Hsien-chou

## **Vie Show Cinemax Co., Ltd. & Wang Pai Jih Hsin Cinema Co. Ltd.**

827th Commissioners' Meeting (2007)

Case: Vie Show Cinemax Co., Ltd. filed a pre-merger notification to the FTC regarding its intention to merge with Wang Pai Jih Hsin Cinema Co. Ltd. in terms of Article 11 of the Fair Trade Law

Key Words: Vie Show Cinemax, Wang Pai Jih Hsin Cinema, merger

Reference: Fair Trade Commission Decision of September 27, 2007 (the 829th Commissioners' Meeting)

Industry: Motion Picture and Video Projection (8530)

Relevant Laws: Articles 6(1), 11(1) and 12(1) of the Fair Trade Law

### Summary:

1. This case was originated from the facts that Vie Show Cinemax Co., Ltd. planned to contribute capital to acquire 50% shareholding of Wang Pai Jih Hsin Cinema Co. Ltd. which operated Showtime Cinemas in Jih Hsin flagship store. Under the commission of Wang Pai Jih Hsin Cinema Co. Ltd., Vie Show Cinemax Co., Ltd. was to operate Showtime Cinemas in Jih Hsin flagship store. Vie Show Cinemax Co., Ltd. and Wang Pai Jih Hsin Cinema Co. Ltd. were all in the motion picture distribution industry, and the merger which they formed fell in the class of the horizontal merger, which fell under the merger type set forth in Articles 6(1)(ii), (iv) and (v) of the Fair Trade Law (FTL) which respectively provide that “where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise,” “an enterprise ... is entrusted by another enterprise to operate the latter’s business” and “an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.” In addition, the market share of Vie Show Cinemax Co., Ltd. in 2006 was 26.79% and it had already reached the threshold for the filing of the pre-merger notification set forth in Article 11(1)(ii) of the FTL. Vie Show Cinemax Co., Ltd. and Wang Pai Jih Hsin Cinema Co. Ltd. did not fall within the exceptional circumstances set forth in Article 11(1). Therefore, the parties shall file a pre-merger notification to the Fair Trade

Commission (FTC) by issuing a letter with annexes prior to the merger.

2. Findings of the FTC after investigation: There were approximately 20 cinemas in Taipei City, not including second-run cinemas, and the competition among them was vigorous. After the merger of Vie Show Cinemax Co., Ltd. and Wang Pai Jih Hsin Cinema Co. Ltd., the enterprises of the merger would still have no capability of raising the prices alone, and the merger would also not result that each cinema jointly monopolized the prices of entrance tickets. In addition, engaging in the domestic motion picture distribution business did not require large capital and a high level of technicality, and it would be unlikely that the said merger would advance the entry barrier of potential competitors, as there was a growing trend for the demand of leisure and entertainment in the modern life style. There was still a room for development of the motion picture distribution market so that there were opportunities for the new comers to compete with the existing enterprises. Besides, if Vie Show Cinemax Co., Ltd. and Wang Pai Jih Hsin Cinema Co. Ltd., after their merger, raised the prices of entrance tickets on their initiative, consumers might immediately turn to purchase tickets from other cinemas or give up going to the cinemas and see DVD movies or movies on TV instead. In addition, the merger of Vie Show Cinemax Co., Ltd and Wang Pai Jih Hsin Cinema Co. Ltd. would not weaken the ability of trading counterparts or potential trading counterparts to counterbalance. Therefore, the overall economic benefits brought by the merger in this case would outweigh the disadvantage resulting from the competition restraints. Therefore, in accordance with Article 12(1) of the FTL, the FTC does not prohibit the merger of Vie Show Cinemax Co., Ltd. and Wang Pai Jih Hsin Cinema Co. Ltd.

Appendix:

Vie Show Cinemax Co., Ltd.'s Uniform Invoice Number: 16086448

Wang Pai Jih Hsin Cinema Co. Ltd.'s Uniform Invoice Number: 80694073

Summarized by Mai, Huei-li; supervised by Lu, Li-na

## **Acer Inc. & Gateway, Inc.**

829th Commissioners' Meeting (2007)

Case: Acer Inc. filed a pre-merger notification to the FTC regarding its intention to merge with Gateway, Inc.

Key Words: competition restraint, economic benefits, personal computer

Reference: Fair Trade Commission Decision of September 27, 2007 (the 829th Commissioners' Meeting)

Industry: Computer Integration Systems Services (6202)

Relevant Laws: Articles 6, 11 and 12 of the Fair Trade Law

### Summary:

1. In order to introduce the multi-brand marketing strategy and fulfill the purpose of consolidating its market position in the United States, Acer Inc. wanted to obtain the brand of Gateway, Inc. Through this merger, it planned to acquire 100% shareholding of Gateway, Inc. It filed a pre-merger notification to the Fair Trade Commission (FTC) in accordance with the Fair Trade Law (FTL).

2. After the Commission conducted an investigation on this case, it found that the merger of this case fell under the merger type set forth in Article 6(1)(ii) of the FTL, which provides that “where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise.” In addition, the market share of Acer Inc. in the domestic laptop market in 2006 had reached 26.1% – Acer Inc. had already reached the threshold for the filing of the pre-merger notification set forth in Article 11(1)(ii) of the FTL. Therefore, such a merger shall be reported to the Commission. The FTC accepted handling Acer Inc.’s application for merger in accordance with Article 7(1)(ii) of the Enforcement Rules to the FTL.

3. Although the market shares of the enterprises participating in the merger in the domestic desktop and laptop sales markets had reached 18.4% and 26.1% respectively, the enterprises still had to face the vigorous competition with many

international brand companies (for example, HP, DELL, SONY, APPLE, LENOVO, Toshiba and so on). Additionally, they faced low price competition from CLONE (and self-assembled) enterprises and the new threats derived from the computer components enterprises' businesses of the barebone systems; therefore, it would still be difficult for the enterprise participating in the merger to be capable of raising the price of a product or service remuneration alone, and the merger would not cause obvious harm on the level of competition in the market as a whole. In the same way, Gateway, Inc. had not sold desktop computers and laptops in the domestic markets since 2001; after the merger, its market structure would not change. Furthermore, as it face the vigorous competition with many international brand companies and new competitors have no obvious entry barriers, the ability of trading counterparts or potential trading counterparts to counterbalance the enterprises of the merger against the raise of prices of products or service remunerations remain strong. The merger would not cause adverse effects on the up- and down-stream trading counterparts. After the merger in this case, the overall economic benefits would outweigh the disadvantage resulting from the competition restraints. Therefore, in accordance with Article 12 of the FTL, the FTC does not prohibit the merger of Acer Inc. and Gateway, Inc.

Appendix:

Acer Inc.'s Uniform Invoice Number: 20828393

Summarized by Chen, Haw-kae; supervised by Liou, Chi-jung

### 3.3 PROHIBITED CASES

#### **Holiday Entertainment Co., Ltd. & Cashbox Partyworld Co., Ltd.**

800th Commissioners' Meeting (2007)

Case: Holiday Entertainment Co., Ltd. filed a pre-merger notification regarding its intention to merge with Cashbox Partyworld Co., Ltd.

Key Words: exclusive purchase, monopoly abuse, entry barrier

Reference: Fair Trade Commission Decision of March 8, 2007 (the 800th Commissioners' Meeting); Letter (96) Kung Jye Tzu No. 096002 issued on March 9, 2007

Industry: Audiovisual & Singing Services (9322)

Relevant Laws: Articles 6, 11 and 12 of the Fair Trade Law

#### Summary:

1. Holiday Entertainment Co., Ltd. (hereinafter referred to as "Holiday") and Cashbox Partyworld Co., Ltd. (hereinafter referred to as "Cashbox") filed a pre-merger notification to the FTC on December 27, 2006. Both enterprises of the merger were in the audiovisual and singing services. Holiday planned to acquire and merge with Cashbox in the form of Holiday being the remaining company and Cashbox the acquired company. Since the merger in question would cause these two enterprises to have more than one-third of market share, and therefore, fell under the threshold prescribed in the Fair Trade Law (FTL), the enterprises participating in the merger in question filed a pre-merger notification to the Fair Trade Commission (FTC).

2. Findings of the FTC after investigation: Though the merger region encompassed the whole nation, the affected "geographical markets" were those individual counties/cities with planned short-range communication network or their adjacent counties/cities. For example, Taipei County and Taipei City shall be considered as one geographical market for there are dense bus and metro networks between the two areas. In 2005, the enterprises of the merger had more than 90% market share in Taipei County and Taipei City. The merger would give these two enterprises a

monopoly position. In addition, if the proposed merger did take place, since their sales amount already exceeded half of the total sales amount of the audiovisual and singing services in the nation, these two enterprises would become exclusive purchasers of karaoke tapes, sold by the upstream businesses.

3. The FTC found the competition restraints of the merger in question as follows: (1) Unilateral Effects: If the merger in question did take place, the two enterprises would turn out to be the monopolist in Taiwan County and Taipei City. No other business operators would have the ability to compete with said enterprises. As a result, said enterprises would have the ability to unilaterally raise their service remuneration. Moreover, without sufficient pressure of competition, monopolies tend to be reluctant to lower their costs, engage in products innovation, or improve service quality. Therefore, the consumer's rights and interests would be deeply affected. (2) Entry Barriers: Though the major fixed costs of the audiovisual and singing services industry is merely 25% to 30% of the total costs, the most influential entry barrier is whether a new enterprise can purchase karaoke tapes from the agencies under reasonable conditions. Since the enterprises of this merger had already held superior position in channels, they had substantial influence on the upstream karaoke tape agencies. If the enterprises of the merger requested the karaoke tape agencies to discriminate any new fringe firms entering the audiovisual and singing services industry, it would definitely eliminate the possibility and timeliness for the new businesses to enter the market and further affect the competition. (3) Power to Balance: The final trading counterpart of the audiovisual and singing services enterprises is the individual consumer. If the enterprises of the merger in question merged and became a monopolist in the market of Taipei County and Taipei City, the consumer would not be able to balance said enterprises when these enterprises decided to raise service remuneration. According to the enterprises of the merger, the proposed overall economic benefits should include: (1) synergy generated by scale economy and large-scale operations; (2) downstream businesses' ability to negotiate; (3) enhancement of international competitiveness; (4) provision of job opportunities to produce internationalized talents; (5) reallocation of resources to towns and

townships developing local economy and increasing taxation income. However, the FTC found it unnecessary to eliminate market competition for the aforesaid benefits to take place. Therefore, the FTC determined that the disadvantage resulting from the competition restraints would outweigh the advantage of overall economic benefits and prohibited the merger in accordance with Article 12(1) of the FTL.

Appendix:

Holiday Entertainment Co., Ltd.'s Uniform Invoice Number: 84256265

Cashbox Partyworld Co., Ltd.'s Uniform Invoice Number: 22327867

Summarized by Hsu, Tzung-Yu; Supervised by Lu, Li-Na

## Chapter 4

# Concerted Action

### **Tourist Bus Association of Taiwan Province**

792nd Commissioners' Meeting (2007)

Case: The board of directors of Tourist Bus Association of Taiwan Province violated the Fair Trade Law by making a resolution to request the association of each county/city to invite business operators and mobile license lessees to jointly raise transportation charges

Key Words: tourist bus, resolutions of Board of Directors, raising transportation charges

Reference: Fair Trade Commission Decision of January 11, 2007 (the 792nd Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096007

Industry: Other Bus Transportation (4939)

Relevant Laws: Article 14 of the Fair Trade Law

#### Summary:

1. This case originated from the second meeting minutes of the 11th Tourist Bus Association of Taiwan Province (hereinafter referred to as the "Tourist Bus Association") submitted by the Taiwan Provincial Government. According to said meeting minutes, the resolution for the fourth proposal was to "request the association of each county/city to invite business operators and mobile license lessees to jointly raise transportation charges. Licenses will be denied or licensing fees raised for those who refuse to do so." The Tourist Bus Association additionally mailed said meeting minutes as Letter (94) Shen-Yo-Ke-Lien Tzu No. 284 issued on October 3, 2005 to each director and association of each county/city. Since the intention of said proposal might meet the descriptions of prohibited concerted action, the Fair Trade Commission (FTC) initiated an investigation.

2. Findings of the FTC after investigation: Due to constantly rising gas price,

economic depression, oversupply of tourist buses and price war started by license lessees, the Tourist Bus Association submitted said proposal during the second meeting of the Board of Directors of the 11th Tourist Bus Association at Taipei Cosmos Hotel on September 29, 2005 to reflect the difficulty encountered by its members. During the meeting, no objection was shown against the proposal. Therefore, a resolution was made. It was hoped that through the execution of this resolution, transportation charges would be raised and price war avoided.

3. Grounds for Disposition: The Tourist Bus Association had 62% of market share of domestic tourist bus transportation service market. Therefore, the act that the Tourist Bus Association employed a resolution to request business operators and license lessees to jointly raise transportation charges has affected the supply and demand of domestic tourist bus transportation service market and restrained tourist bus business operators from freely deciding on prices. Such an act has also restrained enterprises from taking favorable prices, quantity, quality, service or other conditions to strive for trading opportunities and weakened the competition mechanism of the market. It has met the descriptions of “concerted action” set forth in Article 7 of the Fair Trade Law (FTL) and in violation of Article 14(1) of the FTL. The FTC therefore imposed an administrative fine of New Taiwan Dollars (NT\$) 500,000 in accordance with Article 41 of the FTL.

Summarized by Jan, Lih-Ling; Supervised by Chiang, Kou-Lun □

## **Non-Life Insurance Association of the ROC**

794th Commissioners' Meeting (2007)

Case: Non-Life Insurance Associations of the R.O.C. violated the Fair Trade Law by engaging in concerted action that was sufficient to affect the supply and demand in the property insurance market by consenting to prevent its members from complying with the second stage of the "Premium Liberalization of the Property Insurance Market"

Key Words: consent, property insurance market

Reference: Fair Trade Commission Decision of January 25, 2007 (the 794th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096021

Industry: Property and Liability Insurance (6520)

Relevant Laws: Article 14(1) of the Fair Trade Law

### Summary:

1. In order to promote the liberalization of premiums in the property insurance market and to safeguard the insurer's rights and interests, the Financial Supervisory Commission, Executive Yuan (hereinafter referred to as the "FSC"), enacted the "Premium Liberalization of the Property Insurance Market Plan" (hereinafter referred to as the "Plan"). The content of the second stage of the said Plan was to promote the modification of commercial fire insurance and type A car damage insurance, type B car damage insurance, collision insurance without deductibles, car theft insurance, and third-party liability insurance in terms of "physical injury" and "monetary loss" and to adjust the hazard premium for any car insurance within 5%. However, the NLIA claimed that "maintaining current premium rates is the common acknowledgement of the industry for pursuing order and stability", and requested its members not to submit an application for the premium liberalization with the FSC regarding the premium rates for automobile insurance via the memorandums, meeting minutes of the Board of Directors, and emails. This kind of act might affect the consumer's rights and interests.

2. Findings of the FTC after investigation: The FSC sent a letter on March 30,

2005 to request that the NLIA inform its members to apply for premium liberalization regarding any automobile insurance. The FSC additionally sent a letter on July 8, 2005 to request that the NLIA inform its members to truthfully comply with the letter issued by the Taiwan Insurance Institute on June 30, 2005. The said letter of the Taiwan Insurance Institute stated that the deadline for the modification of the hazard insurance premium of any automobile insurance and the application for review was the 15th day of August each year, and that, with the approval of the Insurance Bureau of the FSC, the hazard insurance premium may be adjusted in the following year. However, during the 10th meeting of the 3rd Board of Directors of the NLIA on July 28, 2005, the Automobile Insurance Commission reported that, “upon the discussion of the Automobile Insurance Commission...for the implementation of the second stage of the premium liberalization, the premium modification will be applied after the completion of the adjustment calculation.” The Board of Directors passed a resolution stating “to be consulted” and mailed the meeting minutes as Letter (94) Chan-Tzong-Tzu No. 099 of August 2, 2005 to its members. It was also found that according to the “memorandum” and “attachment” attached to the email transmitted by the “Compulsory Automobile Liability Insurance Pool” respectively on July 25, 2005 and August 4, 2005, the common acknowledgement of the industry for pursuing order and stability and maintaining current premium rates was formed during 2005 through the meetings of the Automobile Insurance Commission of the NLIA.

3. Grounds for Disposition: The NLIA employed the agreement of the Automobile Insurance Commission and the decision of the Board of Directors to restrain hazard insurance premiums from being lowered and requested its members to comply accordingly. It can be proved that a “mutual consent” of concerted action existed then. Externally, none of the members applied for automobile insurance premium liberalization during 2005. As a result, it can be determined that the consent of the NLIA to maintain premium rates restrained the freedom of its members to decide on the prices and affected the supply and demand of product trade or services in violation of Article 14(1) of the Fair Trade Law (FTL).

Summarized by Chi, Hsuen-Li; Supervised by Chen, Yuhn-Shan

## **Taipei Hsien Jewelry Commercial Association**

804th Commissioners' Meeting (2007)

Case: Taipei Hsien Jewelry Commercial Association violated the Fair Trade Law by restraining prices of ornamental gold of its members

Key Words: ornamental gold market, association, concerted action

Reference: Fair Trade Commission Decision of April 12, 2007 (the 804th Commissioners' Meeting); Kung Ch'u Tzu No. 096082

Industry: Jewelry and Related Articles Manufacturing (3391)

Relevant Laws: Articles 7(1), (3) and 14(1) of the Fair Trade Law

### Summary:

1. This case originated from complaints of the jewelry enterprises that: Taipei Hsien Jewelry Commercial Association informed its members of daily buying and selling prices of ornamental gold, white gold and gold by the short message service (sms, hereafter) at about 10:40 each morning. In the event that any particular member does not comply with the suggested selling prices of the Association, the Association will entail the member to conform to the prices by telephone calls, sending staffs to persuade and exhort the member and issuing a letter for warning. Such an act restrained price competition amongst members and the Association in violation of Article 14 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: Taipei Hsien Jewelry Commercial Association has approximately 500 members, which are all in jewelry business in Taipei County. The said Association informed its members of “the reference list prices” for buying and selling ornamental gold, “the whole price of gold” and “the list price of white gold” by sms each day. The said whole price of gold is the cost price for the member of the Association (i.e., producer price), which is the lowest price of the offered prices of gold provided daily by the Central Trust of China, importers or service wholesalers, and the members can regard the prices as reference when they procure gold from the upstream gold suppliers. The Association indicated that the reference list prices of ornamental gold stipulated by the Association were only for

the members' reference prior to pricing their products and were not binding; it however admitted that in the case that a member persistently sells ornamental gold at prices lower than or approximate to international quotations and affects the rights and benefits of the same business in the vicinity, the Association will request the local directors and supervisors to go to the jewelry store to understand the reasons for lower prices. As a matter of fact, a jewelry enterprise also had ever priced ornamental gold lower than "the list price of gold," the Association, by telephone calls or sending people for visits, had persuaded and exhorted the jewelry enterprise that the store shall conduct its business in harmony with the same business, and selling ornamental gold at prices lower than "the list price of gold" was prohibited. The Association additionally issued letters to all members on August 29, 2005, to persuade and exhort them that selling ornamental gold at prices lower than international quotations was prohibited.

3. Grounds for Disposition:

(1) Findings of the FTC's investigation showed that Taipei Hsien Jewelry Commercial Association indeed persuaded and exhorted members, and restrained their prices of ornamental gold, by the means of telephone calls from the director-general or director, or sending staff to pay personal visits. The Association justified its act on restraining the aforementioned conducts of members that in the event that a member persistently sells ornamental gold at the prices lower than or approximate to international quotations, these evidences might reflect something wrong with the material sources of ornamental gold and purity of gold, or that the member may include processing charges to cover price difference and hence deceive consumers.

(2) The decision of the FTC's commissioners' meeting showed that the acts of restraining business activities conducted in terms of the charter, a resolution of a general meeting of members or a board meeting of directors or supervisors of the Association, or any "other means" fell under the term, concerted action, set forth under the FTL and the text concerning such an action is provided under Article 7(4) of the FTL. As international gold price fluctuates every day and the direct cost of

selling ornamental gold is obviously different due to the differences of the material sources of ornamental gold and the time of buying. In the same way, the operation cost of each jewelry enterprise is different, so are the market environment and competition conditions confronted by it and the adopted commercial strategies. Therefore, the price competition of ornamental gold will not impede with the operation of the market function, and it will benefit consumers. The aforementioned act of Taipei Hsien Jewelry Commercial Association would cause jewelry enterprises to be inclined to selling ornamental gold at prices not lower than international quotations, and then would cause the lower limit of price and harm price competition. It might further affect the market function for trading ornamental gold in the related markets. Thus, it did not conform to the provision that prohibits concerted action as provided by Article 14(1) of the FTL. In conclusion, the FTC ordered the Association to cease the unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT\$) 500,000 in terms of the fore part of Article 41 of the FTL.

Summarized by Taur, Rong; Supervised by Liao, Hsien-Chou □

## **Pacific Rehouse Co., Ltd., Chinatrust Real Estate Co., House Real Estate Co. Ltd., Sinyi Real Estate Inc. and Giga House**

821st Commissioners' Meeting (2007)

Case: Pacific Rehouse Co., Ltd., three other real estates agencies, and Giga House were complained for violating the Fair Trade Law by failing to file a pre-merger notification and concerted application to the FTC regarding, respectively, their intentions to merge and form a concerted action, publishing an untrue advertisement and conducting a joint sale

Key Words: real estate agencies, concerted action, joint sale

Reference: Fair Trade Commission Decision of August 2, 2007 (the 821st Commissioners' Meeting); Letter (96) Kung Yi Tzu No. 0960006824 on August 9, 2007

Industry: Real Estate Agencies (6812)

Relevant Laws: Article 6(1), 11(1), 14 and 21 of the Fair Trade Law

### Summary:

1. The case was originated from a complaint filed by Yungching and the complaint stated briefly as follows: Four real estates agencies, Pacific Rehouse Co., Ltd. (hereinafter referred to as “Pacific Rehouse”), Chinatrust Real Estate Co. (hereinafter referred to as “Chinatrust”), House Real Estate Co. Ltd. (hereinafter referred to as “House”) and Sinyi Real Estate Inc. (hereinafter referred to as “Sinyi”), and Giga House (hereinafter referred to as “Giga”) jointly manufactured the DM Handbooks on “House Information” and published the advertisements on sales of real estates. They allegedly violated the provisions of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: Giga was established on December 14, 2000. Before Fair Trade Commission Interpretation Kung-Yen-Hse-Tzu No. 012 (the joint investment act which is done by more than two existing enterprises to establish a new business is not within the scope of Article 6(1) of the FTL) ceased to apply, it would be difficult to find that the establishment of Giga constituted in violation of Article 11(1) of the FTL. In addition, Giga was established by Sinyi, Pacific Rehouse and Chinatrust through joint investment, and its business was the electronic information service, which integrated the real estate information online for real estate agencies’ and general consumers’ search and utilization – the service was to allow the circulation of the information of transactions between consumers and real estate agencies and supply and demand matching, and there was no mechanism that the members must report back the quantity of the success cases. Furthermore, the members did not need to pay other fees other than monthly charges. Nonetheless, “House Information” was the written circulation platform, and the information on houses was provided by the members of the territorial fellowship of Sinyi, Pacific Rehouse, Chinatrust and House. Both Giga and “House Information” were the channels for Pacific Rehouse and three other real estate agencies to provide the diverse services on exchange of information, so as to advance the efficiency or speed

of selling real estates.

3. Due to the following reasons, the Commission found that the aforesaid cooperation did not restrain the competition on service remunerations amongst Pacific Rehouse and three other real estate agencies (or other franchise stores), nor eliminating the competition effects of other competitors that did not take part in the cooperation.

(1) After the investigation, it was found that Pacific Rehouse and three other real estate agencies did not jointly decide the amounts of service remunerations. In accordance with the content of the Membership Agreement of Taiwan's Real Estate Portal concluded between Giga and the members, these real estate agencies did not jointly decide the standard of collection of service remuneration. In the same way, the service which was supplied by Giga in this case was to integrate the information on sales of real estate of Pacific Rehouse and three other real estate agencies (or other franchise stores) through the online platform, allow real estate brokers and general consumers to search information on transactions and supply and demand matching – there was no mechanism that the members must report back the quantity of the success cases. It would be difficult to find that their brokers intended to make profits through the online platform provided by Giga, mutually supervising the quantities of success cases or exchanging competitively sensitive information. Besides, the Membership Agreement of Taiwan's Real Estate Portal did not stipulate clauses to regulate the means of allocation and ratio of service remunerations when such service remunerations were derived from the joint sale of a real estate from different agencies. Hence, it would be difficult to find that Pacific and three other real estate agencies restrained the competition on service remuneration through jointly contracting the means of allocation and ratio of service remunerations. In addition, the service remuneration collected by Pacific Rehouse and three other real estate agencies (or other franchise stores) was all conformed to the standard stipulated by the Department of Land Administration, Ministry of Interior. Sinyi collected 1% and 4% service charges from the buyer and seller respectively; Pacific Rehouse, Chinatrust and House respectively collected 2% and 4 % of a concluded price at maximum as the

service remuneration from the buyer and seller, and the rates charged by Sinyi were different from the rates charged by Pacific Rehouse, Chinatrust and House respectively. In conclusion, there was still no concrete evidence sufficient to find that Pacific Rehouse and three other real estate agencies involved in contracting to jointly determine service remunerations, or restraining the competition on service remuneration through exchanging competitively sensitive information or other forms of alliances.

(2) It was further found that the three real estate agencies, Pacific Rehouse, Sinyi and Chinatrust established Giga through joint investment. House subsequently became Giga's member. The four said real estate agencies (or other franchise stores) published the information related to the sales of real estates under commission. However, the internet is an open information platform, setting up a website does not require a high standard of technique, or huge capital contribution, hence it is not difficult to enter the market. In the same way, there are many websites which provide information on real estates in the market and they compete each other, such as "Yungching," "House OL," "HouseWeb," "Real Estate Network" and "Qhouse." As there are many market participants and there is no substantial market entry barrier, it would be difficult to find that the act of cooperation amongst Pacific Rehouse and three other real estate agencies was sufficient to obstruct or eliminate other competitors who did not join the cooperation from participating in competition.

4. Furthermore, as for the part, "One agency under commission and multiple listing in four real estate agencies," as claimed in the advertisement, it was found that the services provided by Giga were to integrate the messages on many real estate agencies' sales of real estates under commission and allow supply and demand matching, so as to allow consumers to search and utilize. In fact, Giga indeed possessed the characteristics, convergence of joint sale messages and circulation. Therefore, on the basis of the perceptions of the trading counterparts and the element which the FTC based its finding, determining whether there was an indication of joint sale on the basis of the ordinary attention paid by the general public of ordinary knowledge and experiences, it was indeed difficult to find that there were differences

between the aforesaid representation or symbol and the facts and hence it was difficult for a considerable number of the general public to accept such misrepresentation or symbol. The content of the service provided by Giga was not meant that a consumer was only required to entrust one of the four real estate agencies, and he would receive services from the other three agencies to sell the real estate. In terms of the degree, this fact was indeed different from the meaning of “joint sale service” as defined in the “Explanation of Joint Sale Administered by Real Estate Agencies.” Nevertheless, the purpose of the aforesaid explanation is to regulate the real estate agencies that form an alliance or merger through the practice of joint sale and such formation results in the anti-competition effect, restraining market competition. Therefore, the joint sale service in the Explanation is to limit to the transaction types, a number of real estate agencies jointly search buyers, and the agent who looks for clients and the agent who sells houses may be from different agencies; nevertheless, it does not exhaust all transaction types. In addition, as the term, “joint sale,” still includes many reasonable interpretations, the FTC could not find that the representation or symbol at issue was false, untrue and misleading, on the basis of the difference between the contents of the services provided by Giga and the term, “joint sale,” defined in the aforesaid Explanation. Nevertheless, in order to avoid future occurrence of similar competition or trade disputes, the Commission issued a letter to request Giga to notify its members that the members should avoid using any representations or symbols which will likely mislead consumers into believing that entrusting one real estate agency to sell a real estate will get four real estate agencies to sell it under the same commission.

Summarized by Hsu, Hsiu-feng; supervised by Liao, Hsien-chou

## **Twelve Liquid Petroleum Gas Distributors in Huwei Township, Yunlin County**

826th Commissioners' Meeting (2007)

Case: The liquified petroleum gas distributors in Huwei Township, Yunlin County violated the Fair Trade Law by jointly raising the sales price of liquified petroleum gas

Key Words: liquid petroleum gas distributors, relevant market, domestic liquid petroleum gas

Reference: Fair Trade Commission Decision of September 6, 2007 (the 826th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096147

Industry: Retail Sale of Other Fuel Products in Specialized Stores (4829)

Relevant Laws: Article 14(1) and 41 of the Fair Trade Law

### Summary:

1. This case was originated from the complaint referred to as by Mr. Wu in Huwei Township, Yunlin County and the complaint stated that: The liquid petroleum gas distributors (and the liquefied petroleum gas stores) in such a township almost had raised the sales price of domestic 20kg liquid petroleum gas to New Taiwan Dollars (NT\$) 500 per barrel on the later half of June, 2004 and the sales prices was raised by the amount which had reached to NT\$ 50 per barrel. However, in the same month of the same year, the up-stream providers, COC Corporation, Taiwan, and Formosa Petrochemical Corporation, raised the list price of domestic liquid petroleum gas to NT\$ 1.5 per kg (and the cost of 20kg liquid petroleum gas was only raised by NT\$ 30) on June 5, 2004. It was obvious that the liquid petroleum gas distributors in Huwei Township, Yunlin County, possibly involved in the unreasonable raise in sales price and therefore, the Commission immediately conducted an investigation.

2. Findings of the FTC after investigation:

(1) As the liquid petroleum gas distribution market in Huwei Township had undergone a long-term competition in price cutting and the enterprises had been unable to reflect costs, the liquid petroleum gas distributors in the area, Ta-Lung Fuel

and Chuan-Shuai Corporation, took the advantage of the opportunity that COC Corporation, Taiwan and Formosa Petrochemical Corporation raised the list price of domestic liquid petroleum gas to NT\$ 1.5 per kg on June 5, 2004 – they invited the enterprises which were in the same line of business of COC Corporation, Taiwan and Formosa Petrochemical Corporation in the township to dine in the Wu Fu Yuan Restaurant together. Four enterprises did not send the representatives to attend the meeting, but the representatives of the rest of the twelve enterprises in the township had all attended the meeting. The attendants reached a consensus to jointly raise the sales price of domestic 20kg liquid petroleum gas from NT\$ 450 per barrel to NT\$ 500 per barrel, and the amount of the raise per barrel was higher than the amount of the raise initiated by the up-stream enterprises.

(2) The area where the main supply of liquid petroleum gas by the twelve enterprises that involved in this case was centralized was Huwei Township. As such enterprises had to face the competition among the liquid petroleum gas distributors in the township and the threat of the competition from the enterprises which were located outside the area, the FTC was to take into consideration the waiting time for delivery of gas which could be tolerated by the purchasers (subjectively, the tolerate time for each resident is different; therefore, objectively, gradually deduct the general public's demand of gas supply from the distance between Huwei Township and other areas) and the willingness and capabilities of the enterprises to deliver (objectively, gradually increase the cost of the gas supply by the distance between Huwei Township and other areas and deduct the willingness to supply gas and profits) before determining the scope of the relevant market in this case. In sum, the quantity of the gas supply of the twelve enterprises which took part in the gathering in this case amounted to 20.12% of the total quantity of gas supply of the whole liquid petroleum gas distributors in such a relevant market; it however amounted to 88.85% of the total quantity of gas supply of the liquid petroleum gas distributors in Huwei Township – it was obvious that the mutual understanding reached through the concerted action in this case could affect the demand and supply within the market, it even caused greater impacts on Huwei Township. In addition, the information on the prices of liquid petroleum gas in each township, which was gathered through the investigation of the

Bureau of Energy, Ministry of Economic Affairs showed that the sales price of domestic 20kg liquid petroleum gas in Huwei Township was NT\$ 450 in May 2004, the price was NT\$ 500 in June and July of the same year; until August of the same year, the sales price was however affected by the raise of the list price of domestic liquid petroleum gas initiated by COC Corporation, Taiwan on August 11, 2004 and the sales price in that month reached to NT\$ 500 or NT\$ 520. Accordingly, the aforesaid information had proved that the concerted action of these enterprises had caused substantial impact on the demand and supply in the market related to this case.

3. Grounds for Disposition:

(1) The twelve enterprises in Huwei Township, Yunlin County, which were related to this case, dined in the Wu Fu Yuan Restaurant together during June 2004, and agreed to jointly raise the sales price of domestic 20kg liquid petroleum gas to NT\$ 500 per barrel. It was not only obvious that the content of the mutual understanding had caused impact on the demand and supply within the market, but it also caused greater impact on Huwei Township and the latter incident was sufficient to affect the market function of the liquid petroleum gas distribution market in such an area. It was found that the enterprises violated the provision on “No enterprise shall have any concerted action” provided by Article 14(1) of the Fair Trade Law (FTL).

(2) After considering the motive, purpose and anticipated improper profits of the unlawful acts of the enterprises and the businessmen related to this case; the degree and duration of the unlawful acts’ harm to trading order; the benefits derived on account of the unlawful acts; the scales, operating conditions and market positions of the enterprises; the circumstances of the past violations; and the remorse shown for the acts and attitudes of cooperation in the investigation; the enterprises and the businessmen were ordered to immediately cease the aforesaid unlawful acts in accordance with the fore part of Article 41 of the FTL, Chuan-Shuai Corporation was imposed with an administrative fine of NT\$360,000; Ms. Lin, Yen-yi and Ta-Lung Fuel an administrative fine of NT\$250,000; Sen-Ming Popane Co. Ltd. NT\$200,000; Tai-An Gas Corporation NT\$150,000; Ms. Chen Huang, Li-hua and Yung-Chi Gas, and Mr. Liao, Yen-qin and Sen-Mao Petroleum Gas NT\$100,000 respectively;

Chih-Wen Corporation NT\$90,000; Chien-Yeh Liquid Gas Co. Ltd. and Mr. Chiu, Sheng-ping NT\$70,000 respectively; Mr. Lin, Sung-hsieh and Mr. Wu, Shun-hsing NT\$50,000 respectively. The total of the administrative fines amounted to NT\$ 1,590,000.

Appendix:

Chuan-Shuai Corporation's Invoice Number: 64192980

Ta-Lung Fuel's Invoice Number: 64118906

Sen-Ming Popane Co. Ltd's Invoice Number: 64408095

Tai-An Gas Corporation's Invoice Number: 64942251

Yung-Chi Gas's Invoice Number: 64193382

Sen-Mao Petroleum Gas's Invoice Number: 64409313

Chih-Wen Corporation's Invoice Number: 64941372

Chien-Yeh Liquid Gas Co. Ltd.'s Invoice Number: 64306267

Summarized by Hung, Ying-chieh; supervised by Sun, Ya-chuan



## Chapter 5

# Unfair Competition-Resale Price Maintenance

### Taiwan Salt Industrial Co., Ltd.

793rd Commissioners' Meeting (2007)

Case: Taiwan Salt Industrial Co., Ltd. violated the Fair Trade Law by conducting resale price maintenance clause in its franchising and distribution contracts

Key Words: franchise, distribution, resale

Reference: Fair Trade Commission Decision of January 18, 2007 (the 793rd Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096010

Industry: Cosmetics Manufacturing (1940)

Relevant Laws: Article 18 of the Fair Trade Law

#### Summary:

1. This case originated from a complaint submitted by a franchisee of the Taiwan Salt Industrial Co., Ltd.'s (hereinafter referred to as "TAIYEN") to the Fair Trade Commission (FTC) stating that: TAIYEN constantly increased sales channels besides the original franchisees. TAIYEN provided lower prices for other channels and allowed the new channels to sell at low prices in the market. Additionally, TAIYEN restrained the franchisees from lowering the prices. As a result, the franchisees were unable to fairly compete in the market. TAIYEN's acts of discrimination and improper operation restraints were possible in violation of Articles 18 and 19 of the Fair Trade Law.

#### 2. Findings of the FTC after investigation:

Besides the complaints filed by TAIYEN's franchisees about TAIYEN's acts of stipulating relevant rules pertaining to the sales prices and issuing letters to request franchisees to follow such resale price policies, TAIYEN's distributors also submitted

contract provisions and letters issued by TAIYEN in regards to sales price restraints. TAIYEN requested these distributors to sell at prices not lower than 90% of the original prices. One of the distributors even submitted proofs showing the punishment it suffered from TAIYEN for selling at low prices. TAIYEN claimed that though the aforesaid provisions and letters used regulative terms, they only served as suggestions and that no company was punished therefore. TAIYEN additionally claimed that the provisions in the relevant franchising contracts and letters were requests for franchisees and distributors not to sell the goods at prices lower than the operating costs. According to the statement of TAIYEN, even if TAIYEN punished franchisees or distributors, the ground for punishment was their violation of channel segmentation rather than selling at low prices.

3. Grounds for Disposition:

(1) After investigation, the FTC found that after a product was sold to a franchiser and distributor by TAIYEN, the ownership of such a product was transferred to such franchiser and distributor. Such a franchiser and distributor would then have to resell this product to obtain profits, and would also have to bear the risks of not being able to sell this product. In the contracts signed by TAIYEN with its franchisers and distributors, TAIYEN provided a provision to restrain sales prices. It is obvious that TAIYEN intended to restrain the resale prices. In addition, when the franchising contract or distribution contract was still in effect, TAIYEN continuously issued letters or facsimiles to inform and to warn its franchisers and distributors not to sell at a price lower than a certain amount. TAIYEN even punished distributors that violated such an order. It is obvious that TAIYEN did enforce the aforesaid provision and had certain power to restrain its franchisers or distributors. By doing so, TAIYEN had in violation of Article 18 of the FTL.

(2) TAIYEN had 2.06% market share in 2005, and was ranked the tenth in the cosmetics market. However, TAIYEN's acts of restraining its franchisees and distributors from deciding on resale prices did not profit its own business. Therefore, TAIYEN's expected improper benefits should not be high. Also, TAIYEN had

already had a previous violation. In conclusion, the FTC ordered TAIYEN to immediately cease the unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT\$) 1,000,000.

Appendix:

Taiwan Salt Industrial Co., Ltd.'s Uniform Invoice Number: 89397503

Summarized by Hsu, Hsiu-Feng; Supervised by Chen, Yuhn-Shan

## **Bristol-Myers Squibb (Taiwan) Ltd. & Nestle Taiwan Ltd.**

812th Commissioners' Meeting (2007)

Case: Bristol-Myers Squibb (Taiwan) Ltd. and Nestle Taiwan Ltd. violated the Fair Trade Law by restraining resale prices of milk powder

Key Words: sell, resale, out of stock

Reference: Fair Trade Commission Decision of May 31, 2007 (the 812th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096010 and No. 096102

Industry: Other Food Manufacturing Not Elsewhere Classified (0899)

Relevant Laws: Article 18 of the Fair Trade Law

Summary:

1. This case originated from complaints submitted by pharmacies and lots of the general public to the FTC stating that: Bristol-Myers Squibb (Taiwan) Ltd. (hereinafter referred to as "Bristol-Myers Squibb Company") required the pharmacies to sell Enfalac Infant Formula A+SA (900 gm/can) at the price of New Taiwan Dollars (NT\$) 539, and Nestle Taiwan Ltd. (hereinafter referred to as "Nestle Company") also required them to sell Nan (Gold) H.A. Milk Powder (900 gm/can) at the price of NT\$ 575.

2. Findings of the FTC after investigation:

(1) Bristol-Myers Squibb Company and Nestle Company conducted the sales of milk powder by firstly selling the products to the resellers, the resellers then re-sold them to the downstream channel partners; the products would be finally resold to consumers by the downstream channel partners, the pharmacies. The resellers and lots of pharmacies of the said two companies expressed that since the middle of 2005, Bristol-Myers Squibb Company and Nestle Company indeed, respectively, required them to sell the products at the prices stipulated by the said companies. Additionally, some pharmacies indicated that the two companies ever required them to sign the written agreements to agree on stick with the resale price. The companies retrieved the agreements later, however; the business representative informed the pharmacies orally that they shall coordinate. In order to make the pharmacies to abide by the stipulation of the sales price, Bristol-Myers Squibb Company made the pharmacies out of stock when they refused to coordinate.

(2) Additionally, the findings of FTC on-the-spot investigation on the products in this case in more than ten counties/cities showed that the sales prices of Enfalac Infant Formula A+SA in each place were identical, so were the sales prices of Nan (Gold) H.A. Milk Powder.

3. Grounds for Disposition:

(1) As Bristol-Myers Squibb Company and Nestle Company were to sell milk powder to the resellers, which then re-sold them to the downstream channel partners, pharmacies, and the resellers and pharmacies were to earn profits themselves and bear the risks for not being able to sell the products, the fact that the two companies restrained the downstream resellers and pharmacies from re-selling their milk powder products at prices prohibited by the companies had deprived of the downstream enterprises' ability to determine prices without restraints and the downstream enterprises would be unable to offer reasonable prices based on their competitiveness and cost structures faced by them. The consequence of the acts would weaken the price competition of the same brand and the companies in violation of Article 18 of the Fair Trade Law (FTL).

(2) After considering the relevant factors that the acts of restraining resale prices by Bristol-Myers Squibb Company and Nestle Company had affected the freedom of a lot of downstream enterprises on the determination of prices; they caused the prices of the products concerned in the market to be identical; the function of market competition was severely harmed; and in 2005, the market shares of the two companies in the milk powder market at home were ranked first and fourth respectively, the FTC ordered the companies to cease the unlawful acts and Bristol-Myers Squibb Company was imposed with an administrative fine of NT\$4,000,000 and Nestle Company NT\$2,500,000.

Appendix:

Bristol-Myers Squibb (Taiwan) Ltd.'s Uniform Invoice Number: 11922609

Nestle Taiwan Ltd.'s Uniform Invoice Number: 20683002

Summarized by Lin, Hsin-Wen; Supervised by Wu, Pi-Ju



## Chapter 6

# Unfair Competition-Lessening Competition or Impeding Fair Competition

### **Koninklijke Philips Electronics, N.V.**

791st Commissioners' Meeting (2007)

Case: Koninklijke Philips Electronics, N.V. was complained for violating the Fair Trade Law by conducting illegal patent licensing acts when selling recordable DVD (including DVD-R and DVD+R) to domestic companies

Key Words: DVD-R, DVD+R, patent license

Reference: Fair Trade Commission Decision of January 4, 2007 (the 791st Commissioners' Meeting); Letter (96) Kung Er Tzu No. 0960000150 issued on January 5, 2007

Industry: Data Storage Media Units Manufacturing (2740)

Relevant Laws: Articles 10,19(ii), and 19(vi) of the Fair Trade Law

#### Summary:

1. Koninklijke Philips Electronics, N.V. (hereinafter referred to as "Philips") was complained for violating Articles 10, 19(ii) and 19(vi) of the Fair Trade Law (FTL) by conducting illegal patent licensing acts when selling recordable DVD (including DVD-R and DVD+R) to domestic companies. After this case was investigated and submitted to the Commissioners' Meeting for resolution, not in violation of the FTL was found upon current evidence.

#### 2. Grounds for this Decision:

(1) The technologies required to produce the DVD-R/+R could be classified into two major systems: DVD-R and DVD+R. This distinction is based on the different development of each standard. It is important to note that, other than the patented technologies of Philips, the DVD-R and DVD+R standards are also provided by Sony,

Hewlett Packard, Pioneer, Yamaha, Ricoh, Mitsubishi Chemistry, AOL, Hitachi, IBM, Mitsubishi, Panasonic, Toshiba, and JVC. Said companies all have relevant patents of DVD-R/+R and are engaged in relevant patent license. Philips is merely one of the patent licensors. Also, the patented technologies of the other licensors are also critical to the production of DVD-R/+R. Therefore, licensees would still have to obtain license from not only Philips but also all other licensors to manufacture the said products. As a result, Philips would still have to compete with other enterprises and have no power to eliminate competition. Since Philips is not a monopoly, Article 10 of the FTL shall not apply.

(2) The complainant complained about the way that Philips set price for the royalty being based on considerations unrelated to trade, such as “whether it is easy to negotiate (degree of obedience)” or “whether the rights to object or complain are waived.” However, the Fair Trade Commission (FTC) requested the complainant to provide specific evidence to prove the aforesaid circumstances but had never received any response from the complainant. Therefore, the FTC could not confirm the aforesaid complaints. In addition, the FTC asked domestic manufacturers of the products in question for opinions. None of the businesses confirmed the aforesaid complaints about Phillips. As a result, the FTC was not able to confirm the accused in violation of Article 19(ii) of the FTL.

(3) It was found that Philips had retained an independent and external expert to evaluate whether the patent in question was a necessary patent to fabricate the products in question. In the event that said expert should find any patent inconsistent with the “necessary patent” set forth in the contract, Philips shall delete such patent from the patent list (and the relevant patents obtained by other countries) pursuant to the contract in question. Since Philips had provided relevant mechanism to ensure that the patent list in question encompassed every necessary patent, the action it took shall be deemed appropriate. Furthermore, a patentee’s act of package licensing regarding all necessary patents for one product could surely bring positive economic benefits such as decreasing trading and negotiation costs and avoiding litigation. Such an act has also been practiced in the market of patent license. Therefore, Philips’ act of package licensing shall be appropriate and not in violation of Article 19(vi) of the FTL.

## **All Chinese Internet Inc.**

803rd Commissioners' Meeting (2007)

Case: All Chinese Internet Inc. violated the Fair Trade Law by placing false online advertisements and replicating another's business database

Key Words: false, untrue, misleading, business secret, recruitment website

Reference: Fair Trade Commission Decision of March 29, 2007 (the 803rd Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096071

Industry: Other Information Supply Services Not Elsewhere Classified (6399)

Relevant Laws: Articles 19 and 21 of the Fair Trade Law

### Summary:

1. This case originated from a complaint letter (Exhibit A) filed by 104 Corporation (hereinafter referred to as the "Complainant") stating that: All Chinese Internet Inc. (hereinafter referred to as the "Respondent") had banners on the top of its homepages of "1111 Job Bank" and "1111 Entrepreneurship & Franchising" saying "1111 Job Bank – the biggest job bank of the nation," "1111 Entrepreneurship & Franchising – the biggest entrepreneurship & franchising website of the nation," and "up to 2004, 1111 website has accumulated a growth of resumes of 2,120,000; has 6,000,000 web pages reviewed daily; has more than 2,120,000 resumes; has more than 510,000 visitors everyday; has 4,000 new valid resumes added everyday; has more than 22,000 companies simultaneously using talent inquiry services online; and has more than 80,000 people simultaneously searching for jobs online." However, the aforesaid data was inconsistent with the survey report and the internal analysis report of the Respondent and therefore possibly untrue. In addition, in order to increase resumes of job seekers for its own website, since 2002, the Respondent had instructed its employers, Mr. Cheng and other three people, to connect to the Complainant's website and retrieve the IDs and password of seven of Complainant's contracted clients. The Respondent inappropriately used aforesaid information to view resumes of those job seekers who registered with the Complainant and replicate the same. The Respondent had engaged in unfair competition in violation of Article 19(v) of the Fair

Trade Law (FTL).

2. It was found that the Respondent, in order to increase resumes of job seekers for its own website, had instructed its employees since 2002 to improperly retrieve the IDs and password of seven of the Complainant's business clients who paid for talent search. The Respondent also inappropriately used the aforesaid IDs and password to log into the Complainant's computer and view tens of thousands of resumes of those job seekers who registered with the Complainant. The Respondent further exported and replicated the data and downloaded the same in its computer. After screening the aforesaid data, the Respondent made a list of those who did not registered with the Respondent and submitted the same to the customer service representatives to send email and invite these people to register with the Respondent for the purpose of increasing the Respondent's job seeker database. The aforementioned fact was determined by the Taipei District Court 93 Decision Yi-Tzu No. 1431 and interrogation records provided by the interested parties at the police station.

3. With regard to the issue that whether the "job seeker's information registered with a recruitment website" shall fall under Article 19(v) of the FTL providing "the secret of production and sales, information concerning trading counterparts or other technology related secret of any other enterprise," most scholars suggested to refer to Article 2 of the Trade Secret Act which provides the descriptions of the "innovation," "value," and "secrecy." Present recruitment websites are highly competitive. Based upon the consideration of privacy and security, resumes registered by job seekers with the recruitment websites shall kept private and not searchable by the general public. Recruitment websites shall keep job seekers' private information, such as names, telephone numbers, email addresses, and addresses, confidential. After sorting and arranging the information according to the professions, job seekers' information may be easy for the recruitment websites' trading counterparts to use. The editing and establishment of human resources database and the convenience to search are important factors that enterprises who are seeking for talents would consider prior to paying the recruitment websites for such services. The more the recruitment websites

are dedicated to the sorting process of the job seekers' information, the more the trading counterparts would pay for the account and using the password. Since the trading counterparts would have to separately purchase a "password" to log in as a "member" to utilize the job seekers' information sorted and arranged by the recruitment websites, such transaction shall meet the description of "innovation" and "secrecy." Furthermore, according to the survey on charges of 10 recruitment websites with the highest sales amount in 2005, those 10 recruitment websites all provided job seekers free resume publishing and various job seeking services while enterprises looking for talents would have to pay to obtain complete resume or interview or hire job seekers. Enterprises that are looking for talents depend on the completeness and convenience of job seekers' information before they decide to pay a particular recruitment business for its services. Therefore, said information is considered information of production and sales which contains economic value to the recruitment businesses. It was also found that the trading counterparts of the Complainant must sign a contract and pay for services before they can obtain their membership and password. The trading counterparts should use a pass code given by the Complainant to log in their own webpage to search in the talent database for detailed resumes of all job seekers. Such information economic value of exclusiveness based upon whether such information is paid for or not. Additionally, in light of the privacy of the job seekers and the security of the information, the recruitment websites keep the information confidential through the mechanism of using password. Those who do not sign the contract with the Complainant would not be able to obtain job seekers' personal information contained in an exclusive webpage. Therefore, the Complainant had taken reasonable measures of confidentiality, and the information shall meet the descriptions of "secrecy." Based upon the aforementioned points, the Respondent's act to employ an improper method to obtain job seekers' information and use the same for its commercial purpose had met the description of using "information of production and sales" set forth in Article 19(v) of the FTL. In conclusion, the Respondent had in violation of Article 19 (v) of the FTL by employing an improper method to download and replicate the job seekers' resumes on the Complainant's website, confidential information of production and sales.

4. The Respondent claimed on its web pages “1111 Job Bank – the biggest job bank of the nation,” “1111 Entrepreneurship & Franchising – the biggest entrepreneurship & franchising website of the nation.” However, according to relevant market survey, there were other enterprises having higher sales amount and market shares than the Respondent. The Respondent did not disclose the target and the basis of such comparison on the web page. Therefore, Internet users could not confirm the accuracy of such representations. The Respondent also admitted that it could not provide any fair and objective statistics to support the truthfulness of such representations. The representations made by the Respondent on its web page were sufficient to mislead the general or relevant public into believing that the Respondent is the number one business in the industry. As a result, such representations are false, untrue and misleading. Additionally, the Respondent claimed that “up to 2004, 1111 website has accumulated a growth of resumes of 2,120,000; has 6,000,000 web pages reviewed daily; has more than 2,120,000 resumes; has more than 510,000 visitors everyday; has 4,000 new effective resumes added everyday; has more than 22,000 companies simultaneously using talent inquiry services online; and has more than 80,000 people simultaneously searching for jobs online.” It was found that up to 2004, the number of resumes registered on the Respondent's website was less than 1,950,000. The other evidence provided by the Respondent was the data produced after March 2005 and could not support the aforesaid claim. The Respondent failed to submit any objective and fair proof to support its claim, meaning that such claim is groundless, and therefore in violation of Article 21(1) applied mutatis mutandis to 21(3).

5. After considering the motive; the degree of the illegal act's harm to market order; the circumstances of the violation; the scale of the enterprise; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC, in accordance with the fore part of Article 41 of the FTL, ordered the Respondent to immediately cease the unlawful act and imposed an administrative fine of New Taiwan Dollars (NT\$) 1,000,000 for the violation of Article 19(v) and NT\$500,000 for the in violation of Article 21(1) applied mutatis mutandis to 21(3). The total

amount of the administrative fines imposed was NT\$1,500,000.

Appendix:

All Chinese Internet Inc.'s Uniform Invoice Number: 16776387

Summarized by Lee, Wan-Chun; Supervised by Wu, Lieh-Ling

## **Msscorps Co. Ltd., Tmscorps Co. Ltd., Integrated Service Technology Inc., and Pu Shih To Delicacy Co. Ltd.**

808th Commissioners' Meeting (2007)

Case: Msscorps Co. Ltd., Tmscorps Co. Ltd., Integrated Service Technology Inc. and Pu Shih To Delicacy Co. Ltd. were complained for violating the Fair Trade Law by stealing business secrets and helped the former employees avoid the non-competition clause

Key Words: business secrets, non-compete

Reference: Fair Trade Commission Decision of May 3, 2007 (the 808th Commissioners' Meeting)

Industry: Other Technical Testing and Analysis Services (7129)

Relevant Laws: Articles 19(1), (3) and (5), 22 and 24 of the Fair Trade Law

Summary:

1. After the employees of Material Analysis Technology Inc. (hereinafter referred to as "Complainant"), Mr. Chen, Jung-Chin and Mr. Wen, Jen-Chi, left their company in 2005, they were hired by Msscorps Co. Ltd. (hereinafter referred to as "Msscorps") within two years. On behalf of Msscorps, Mr. Chen did not only conduct business transactions with the trading counterparts of the complainant, but also recruited talents from the complainant grossly by defaming the complainant in the words, "The complainant has no competitiveness after Mr. Chen left office." In the same way, Mr.

Wen provided the information of the trading counterparts for Msscrops. Then, the complainant issued letters to inform Mr. Chen and Mr. Wen that they violated the non-compete clause in the employment contracts. Mr. Wen responded to the complainant that he was employed by Pu Shih To Delicay Co. Ltd. (hereinafter referred to as “Pu Shih To”) at that time and did not violate such a clause. After the complainant conducted an investigation, it is found that Pu Shih To and Tmscorps Co. Ltd. (hereinafter referred to as “Tmscorps”) had the same business address. Thus, the complainant believed that this arrangement was obviously to help Mr. Wen to avoid violating the non-compete clause. Additionally, Msscrops and “National Nano Device Laboratories” (hereinafter referred to as “NDL”), National Chiao Tung University, signed a Strategic Alliance Cooperation Agreement on May 8, 2006; the content of its press release and the content of “Operation Plan” of the complainant were however identical – this matter obviously showed that Mr. Chen and Mr. Wen provided this knowledge based on their working experiences in the complainant. In the same way, no technicians in Msscrops had ever worked or conducted researches in the technology industries, TFT-LCD and LCOS; therefore, Msscrops, by stating untrue messages, conducted unfair competition. In conclusion, Msscrops, Tmscorps, Integrated Service Technology Inc. and Pu Shih To in violation of Articles 19(1), (3) and (5), 22, and 24 of the Fair Trade Law (FTL).

## 2. Findings of the FTC after investigation:

(1) Findings of FTC after investigation: Without warnings, Tokyo Electron Ltd. (hereinafter referred to as “TED”) reduced the cases in considerable quantities entrusted to the complainant and planned to cease its cooperation with the complainant. Although this matter was related to the circumstance that Mr. Chen, Jung-Chin made the statement about the loss of samples to TED, his statement was true and the complainant admitted that the statement was related to this case. It was also found that the complainant cleared the matter up with TED then and both parties continued to cooperate. Additionally, the fact that NDL turned to form a strategic alliance with Msscrops might be a result of Msscrops’ endeavor. The fact that enterprises strive for trading opportunities is attributed to general conditions of

business operation; and in terms of the existing evidence, it would be difficult to find that they in violation of Articles 19(1) or (3) of the FTL.

(2) The complainant additionally indicated that Msscorps stole its “Operation Plan” and signed a Strategic Alliance Cooperation Agreement with NDL – these matters were evidenced in the news release published by NDL. After examining the content of the news in *casu*, the purpose of the news was to explain Msscorps’ business lines and fields of profession; the content of the news, to some extent, was identical with the content of the brief introduction of the complainant. Therefore, it would be difficult to find that such information had practical or potential economic values. As such information was general knowledge known by people working in the said type of information technology business; it would be also difficult to regard such information as “business secrets.” Additionally, the complainant claimed that the complained acquired the information of the trading counterparts of the complainant from Mr. Wen, Jen-Chi who gave the name cards to the complained. As a name card only contained the basic information, name, the name of the company and telephone number and hence it did not expose sensitive information concerning competition, the trading relationship between the complainant and the companies, it would be difficult to identify that such a name card contained commercial information which had economic values and the information which was easily obtained in industries, and that Msscorps in violation of Article 19(5) of the FTL.

(3) Additionally, the findings of FTC investigation showed that no concrete evidence had yet been found to prove that Mr. Chen, Jung-Chin disseminated the speech, “The complainant has no competitiveness after Mr. Chen left office” to the trading counterparts of the complainant, and such enterprises had not ceased to trade with the complainant. Additionally, although Mr. Chen’s statement on the loss of samples to TED was attributed to a fact, it would be still difficult to find that the complained parties in violation of Article 22 of the FTL.

(4) As for the claim that in order to seize the trading opportunities with the trading counterparts of the complainant, the complained parties jointly helped Mr. Chen, Jung-Chin and Mr. Wen, Jen-Chi to avoid the non-compete clause as provided under the employment contracts, the decision on whether two people violate the clause is

still unsure as the issue falls under the scope of civil law and the case is pending at the civil court. In addition, the issue is different from the issue concerning commercialized products and services – it is attributed to employment contracts and rights and benefits of employees. Additionally, the complained parties conduct an act which is to assist its employees in related litigations and such an act also falls under their work conditions. Therefore, it is still difficult to find that the complained parties in violation of Article 24 of the Fair Trade Law.

Summarized by Chen, Haw-Kae; Supervised by Liou, Chi-Jung □

## **Camangi Corporation**

818th Commissioners' Meeting (2007)

Case: Camangi Corporation was complained for violating the Fair Trade Law by improperly notifying or issuing warning letters to the trading counterparts of the competitor

Key Words: web call, infringement of the patent right, warning letter

Reference: Fair Trade Commission Decision of July 12, 2007 (the 818th Commissioners' Meeting)

Industry: Telephones and Cellular Phones Manufacturing (2721)

Relevant Laws: Articles 19 , 22 , 24 and 45 of the Fair Trade Law

### Summary:

1. The complainant of this case was a web-call provider, which supplied web-call software and hardware to terminal servers or dealers. The complained, Camangi Corporation, was also a web-call provider. The complained did not go through the procedures regarding patent infringements – the procedure was that the complained must seek the judgment of the court of the first instance to decide whether the patent rights at issue are infringed, submitted the materials to the professional institute to

assess whether there was an infringement and confirm such an infringement, and stated clearly the content and scope of the patent rights and facts which were specific to the infringement. Unexpectedly, through publishing announcement on newspapers, notifying by telephone calls and issuing warning letters to the trading counterparts of the complainant from November to December 2006, the complained indicated that the complainant's sales or use of its web call products infringed the complained's patent rights. It requested the complainant to cease to sell and stop the use the products in case. It also indicated on its initiative that the complainant should negotiate with the complained about the matters, cooperation, authorization (on its use or sale), and purchasing of related products. It was accused that the complained affected the trade order and caused unfair competition.

2. Findings of the FTC after investigation: The complained was the patent right holder of the Intellectual Property Office No. I250771. From November to December 2006, it notified, by telephone calls, SYSAGE Technology Co., Ltd. and the Taipei City Government – both of them were suspected of being involved in selling or using the infringement patent in this case. The contents of the telephone calls were aimed at stating clearly that the web call products that were sold or used by the receivers infringed the patent rights of the complained and the complained kindly requested the receivers to cease their acts. It was further found that the announcement to the industry published by the complained in the Economic Daily News on November 30, 2006 firstly disclosed the patent rights number and patent name, followed by a statement that the internet call service procedure sold by the related internet communication enterprises in the commercial sector might be infringing the above mentioned rights; and it finally referred to as upon the public that they should identify whether the products were legally authorized by the original equipment manufacturers prior to the use of the products. A comprehensive analysis was made on the content of the whole text, and it was determined that the text did not specify the matter that certain competitors infringed the patent rights of the complained. It was finally found that the complaint email letter that was sent to the Taipei City mayor's mailbox on December 4, 2006, and the legal attest letter that was mailed to

SYSAGE Technology Co., Ltd. on December 5, 2006 – both of the email and letter contained the extracted content of the aforesaid notice to the industry – were all aimed at notifying the persons who were suspected of being involved in the infringement and requesting their cessation of infringement.

3. Grounds for Disposition: In accordance with the findings of FTC after investigation, the telephone calls made, announcement and notice published and letter issued by the complained were aimed at the cessation of infringement of the patent rights caused to the complained through the receivers' acts of sales and use, they did not state clearly that other specific competitors other than the receivers did infringe the patent rights of the complained. The FTC found that the contents made in the telephone calls, announcement, notice and letter were the patent holder's notifications of cessation of infringement against the acts of the sellers and users in accordance with the patent laws and regulations. Furthermore, the complained had commissioned a thirty party to assess whether there was an infringement of patent rights before the announcement and notice on November 30, 2006 was published and the warning letter on infringement of patent rights to SYSAGE Technology Co., Ltd. on December 5, 2006 was issued. The result of the assessment was that the website of SYSAGE Technology Co., Ltd. was substantially identical to the legal scope of the patent held by the complained. Therefore, the complained's exercise of its patent rights were proper and were in accordance with the Patent Law and in accordance with Article 45 of the Fair Trade Law (FTL). No provisions of the FTL shall apply. It would be, as a matter of course, difficult to find the complained in violation of Articles 19(i) and (iii), 22 and 24 of the FTL.

Summarized by Yeh, Su-yen; supervised by Liou, Chi-jung

## Chapter 7

# Counterfeiting Commodities or Trademarks

### **YOYO Marketing Co., Ltd.**

791st Commissioners' Meeting (2007)

Case: YOYO Marketing Co., Ltd. was complained for violating the Fair Trade Law by using identical or similar appearance and symbol of another's product to sell "PROGEN YOYO Diaper"

Key Words: counterfeit, free ride, diaper

Reference: Fair Trade Commission Decision of January 4, 2007 (the 791st Commissioners' Meeting); letter (96) Kung Er Tzu No. 960000165 issued on January 8, 2007

Industry: Wholesale of Other Household Appliance and Supplies (4569)

Relevant Laws: Articles 20 and 24 of the Fair Trade Law

#### Summary:

1. The complainant of this case claimed that YOYO Marketing Co., Ltd. (hereinafter referred to as "YOYO") counterfeited the appearance and symbol of its product "YOYO Diaper" and caused confusion to the consumer regarding the source of products. Such act of counterfeiting the appearance and symbol of another's product was obviously an attempt to free ride on another's goodwill and exploit another's efforts, and was sufficient to affect market trading order in violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: The name and image of "YOYO Diaper" sold by the complainant are registered trademark authorized for use with an infant's portrait as the major part of the appearance. The product is sold in different sizes, which are S – 70 diapers, M – 60 diapers, L – 54 diapers, and XL – 48 diapers, and is NT\$420 per bag. The name and image of "PROGEN YOYO Diaper" are also registered trademark authorized for use. YOYO uses a blue kitten as its major part of

the appearance and the character in its marketing campaign and advertisement. This product is sold in sizes, M – 66 diapers, L – 57 diapers, and XL – 51 diapers, and is New Taiwan Dollars (NT\$) 269-279 per bag. After comparing with other similar products in the market, both products have the similar package shape and material, which are commonly used by the businesses for such products in the market.

3. Grounds for Disposition:

(1) The complaint regarding the counterfeit of product name and symbol shall be a dispute of registered trademark and shall be subject to the Ministry of Economic Affairs, the competent authority, upon the conclusion drawn by both the FTC and the Ministry of Economic Affairs on August 20, 1992. The FTL shall not be applicable.

(2) The package and appearance of the complainant's product, YOYO Diaper, has the similar shape and material used by other diaper products in the market. The relevant product information, descriptions of product features, and infant's portrait shall not be able to represent such a product or its source. There is also no other relevant evidence to prove that the product symbol has been commonly known by the relevant enterprises or consumer. Therefore, it is difficult to determine that YOYO has in violation of Article 20(1)(i) of the FTL by counterfeiting the appearance and symbol of "YOYO Diaper" or causing confusion to the product source.

(3) It was also found that though both YOYO Diaper and YOYO's PROGEN YOYO Diaper use similar packaging design that uses rectangular soft plastic bags and is similar to all other baby diaper products in the market, both products give different exterior impressions using different fonts, images, and colors. YOYO uses the symbol that allows the consumer to easily identify the product source and employs blue kitten as the cartoon character in its marketing activities and complimentary items for its promotion. Therefore, it is difficult to say that YOYO has in violation of Article 24 of the FTL by improperly counterfeiting the appearance and symbol of the complainant's product or free riding on another's goodwill and exploit another's efforts.

## **Hueia Yeha Enterprise Co., Ltd.**

819th Commissioners' Meeting (2007)

Case: Hueia Yeha Enterprise Co., Ltd. was complained for violating Articles 20 and 24 of the Fair Trade Law by selling foot massagers (HY-19934)

Key Words: OSIM, massager, imitate, product appearance, functional shape

Reference: Fair Trade Commission Decision of July 19, 2007 (the 819th Commissioners' Meeting) (Non-disposition)

Industry: Retail Sale of Other Household Appliance and Supplies in Specialized (4749)

Relevant Laws: Articles 20 and 24 of the Fair Trade Law

### Summary:

1. This case was originated from the complaints filed by OSIM International Ltd. and OSIM GHC (Taiwan) Co., Ltd. (hereinafter jointly referred to as "Complainants") and the complaints stated briefly as follows: The product appearances of the foot massagers (HY-19934) of Hueia Yeha Enterprise Co., Ltd. (hereinafter referred to as "Complained") were the imitation of the product appearances of the complainants' iSqueez foot massagers, the appearance design, colors and the combination of patterns of the complainer's products were identical to those of the complainants' products. The imitation resulted that the complainer's products were mistaken for the complainants' products and the consumers were confused about which company manufactured which product. Furthermore, the complainer's was actively exploiting the efforts of the Complainants.

### 2. Findings of the FTC after investigation:

(1) It was found that the upright triangle and shape of dual tank were the main characteristics of the appearances of Complainants' iSqueez products. As the underlined function of such a product was to massage calves, ankles and feet simultaneously, in order to reach the said function, both legs of a user, from his feet to calves, all must be placed in the massager. In addition, the upright-triangular dual tank of such a product was designed on the basis of the shape of a human leg (foot) so

as to enable both legs of a user, from his feet to calves, all to be placed in the massager, and hence simultaneously massage the said parts of a human leg. The upright triangle and shape of dual tank of this product possessed the functional shape; they did not manifest the origin of the product, however. In addition, the other brands of the foot massagers provided by the Complainants, such as Azumi, Sampo, Thrive and Sanyo products, were all designed in the shape of upright-triangular dual tank – therefore we can see that the shapes of such products were designed on the basis of the functional needs, and the shape was not unique to a specific brand. As for the said appearance design (the height, width and the camber of the screen of the product), colors (the colors of the screen and dual tank) and the combination of patterns (the locations of the name of the product and of the trademark), these symbols were still not specially notable after viewing such a product as a whole; and they were insufficient to make related enterprises or consumers to recognize them as the manifestation of the trademark of the product.

(2) It was further found that, since the Complainants' product appearances possessed the functional shapes, the Complainants had no right to exclude other competitors from adopting the functional appearances of the same class in their products. In addition, other brands of foot massagers in the market also adopted similar shapes in appearance design; therefore the appearance of such a product was not competitively unique. In addition, it was found that there were no big differences between the complainants' claimed appearance design (the height, width and the camber of the screen of the product) and the combination of patterns (the locations of the name of the product and of the trademark) and the symbols of other brands of foot massagers on the market; the main color (the silver grey of the screen, the Complainants' referred to as it silver white) of the Complainants' product was the color commonly used by other brands in such a type of products, for example, Thrive and Sanyo use similar colors in the front screens of their foot massagers (MD-6100 and TS-620AA respectively).

### 3. Grounds for Disposition:

(1) The Complainants' product appearances possessed functional shapes and did not

manifest the origin of the products, they were not the symbols set forth in Article 20 of the Fair Trade Law (FTL), which provides that “symbols that are ... commonly known to relevant enterprises or consumers.” Therefore, it was not necessary to specially inquire whether “using in the same or similar manner” the product appearance of the Complained further resulted in “causing confusion with such person's goods.” Therefore, based on the existing evidence, it would still be difficult to find that the complained had acted in violation of Article 20 of the FTL.

(2) As for the appearance design and combination of patterns of the Complainants' products, these symbols were also similar to those of other brands of foot massagers on the market and the Complainants also color their front screens in silver grey which were commonly used in such a type of the products. After the FTC's observation of the appearance design of the Complainants' products as a whole, the said design did not show the fact that the Complained actively imitated the products of the Complainants. In addition, the trademark on the complainer's products was different from that on the Complainants' products and this difference was sufficient for relevant enterprises or consumers to distinguish different products. In conclusion, it would be difficult to find that the Complained had involved in imitating the product appearances of the Complainants' products and being actively exploiting their efforts, in violation of Article 24 of the FTL.

Summarized by Fong, Jyun-cyuan; supervised by Shen, Li-yu □



## Chapter 8

# False, Untrue and Misleading Advertisements

### 8.1 DECISIONS

#### **Far EasTone Telecommunications Co., Ltd.**

791st Commissioners' Meeting (2007)

Case: Far EasTone Telecommunications Co., Ltd. violated Articles 21 and 24 of the Fair Trade Law by issuing untrue news release and comparison advertisements of telecommunications plans

Key Words: telecommunications, rate plans, rates, comparison advertisement

Reference: Fair Trade Commission Decision of January 4, 2007 (the 791st Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096004

Industry: Telecommunications (6100)

Relevant Laws: Article 21(1) and 24 of the Fair Trade Law

#### Summary:

1. This case originated from a complaint letter filed by Taiwan Mobile Co., Ltd. (hereinafter referred to as "Taiwan Mobile") stating that:

(1) Far EasTone Telecommunications Co., Ltd. (hereinafter referred to as "FET") issued a news release and comparison advertisement of telecommunications rate plans (rates comparison chart) on December 29, 2005. Said comparison advertisement compared three plans of three telecommunications enterprises, which were "FET 365," "Taiwan Mobile 268," and "VIBO 386." The items compared were the "Average rates per minute" and the billing amounts when calling "50 minutes per month" and "100 minutes per month" with the aforementioned plans. FET was aware that if calculating with the same standard its average rates would be higher than "Taiwan Mobile 268" and "VIBO 386" but omitted 15% landline calls. Instead, FET stated that its plan "FET 365" had the lowest "average rate" of New Taiwan Dollars (NT\$) 5.1 and the billing amount when calling "100 minutes per month" was NT\$510.

FET further wrongly represented the billing amount of “Taiwan Mobile 268” as NT\$500 when calling “50 minutes per month” and NT\$731 when calling “100 minutes per month.”

(2) In its news release, FET stated that its “FET Double Network 165” had the lowest threshold of all monthly plans of all domestic enterprises. However, the complainant also had a monthly plan “Type 66” while Chunghwa Telecommunications and APBW had “Type 88” monthly plan. Therefore, “FET Double Network 165” was definitely not the monthly plan with the lowest threshold in the domestic market.

## 2. Findings of the FTC after investigation:

(1) FET stated in its rate plans comparison chart that “FET 365” had an average rate of NT\$5.1 per minute (calculated with 50% for FET to FET calls, 35% for calling to other networks, and 15% for calling landlines), and that the billing amount was NT\$510 when calling “100 minutes per month.” According to FET, the average rate of NT\$5.1 per minute of the plan “FET 365” was calculated based upon the preferential rate of “call one minute get one free.” In other words, the rate for making FET to FET calls was NT\$0.04 per second (NT\$2.4 per minute). However, it was found that the calculation of said “call one minute get one free” was only for “the same phone call,” “odd minutes are charged,” and “even minutes are free.” Therefore, if the average rate is NT \$5.1 per minute, the user would have to make phone calls all lasting for even minutes. As a result, upon the user’s actual usage of the plan “FET 365,” the average rate per minute is from NT\$5.1 to NT\$6.3. FET’s act of employing only the lowest rate, NT\$0.04 per second, to calculate FET to FET calls and stating the result in a comparison advertisement without disclosing the calculation rules would easily cause the general public to wrongly believe that “FET 365” had the lowest rate of the three telecommunications enterprises. In addition, FET stated that the billing amount of “Taiwan Mobile 268” was NT\$500 when calling “50 minute per month” and NT\$731 when calling “100 minutes per month” without including Taiwan Mobile’s preference of “first 30 minutes free for Taiwan Mobile to Taiwan Mobile calls.” If said preference was included, the billing amount shall be NT\$355 when calling “50 minutes per month” and NT\$587 when calling “100 minutes per

month.”

(2) FET stated that its “FET Double Network 165” had the lowest threshold in its news release. According to FET, said plan had the lowest threshold of NT\$165 among the monthly plans in the market when applying for a new number. The Monthly fee was able to be offset by calling fees. However, it was found that the complainant provided a monthly plan to new customers as low as NT\$66 a month, which was also able to be offset by calling fees. The plan with lowest monthly fee of Chunghwa Telecommunications was its “Super Value 128” with a monthly fee of NT\$88 which could offset 128 dollars of calling fees. Therefore, FET’s “FET Double Network 165” did not have the lowest threshold.

### 3. Grounds for Disposition:

(1) FET's wrongly claimed that its “FET Double Network 165” had the lowest threshold and wrongly represented the average rates and billing amounts of “FET 365” and “Taiwan Mobile 268.” FET therefore violated Articles 21 and 24 of the Fair Trade Law by making false, untrue and misleading representations regarding its services and services provided by other enterprises.

(2) After considering the motive, purpose and anticipated improper profits of the unlawful acts of FET; 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 type of unlawful acts involved in the violation have been corrected or appropriate warnings have been given 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, in accordance with the fore part of Article 41 of the Fair Trade Law (FTL), imposed an administrative fine of NT\$800,000.

### Appendix:

Far EasTone Telecommunications Co., Ltd.'s Uniform Invoice Number: 97179430

## Potato Cafe

798th Commissioners' Meeting (2007)

Case: Yang, Shuang Mao of Potato Cafe violated the Fair Trade Law by placing false Potato Cafe franchising advertisements

Key Words: 104 entrepreneur website, franchise

Reference: Fair Trade Commission Decision of February 15, 2007 (the 798th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096041

Industry: Restaurants (5610)

Relevant Laws: Article 21(1) of the Fair Trade Law

### Summary:

1. This case originated from a complaint letter stating that Yang, Shuang Mao of Potato Cafe placed false franchising advertisement of its "Potato Cafe Baked Cheese Potatoes" and "French Japanese Donut" on 104 Entrepreneur Website. The complainant also submitted a complaint regarding four issues in the advertisement, which were franchiser's business organizational type, franchiser's overseas franchising status, franchiser's technical support and material supplies, and another enterprise' name used in the contract by the franchiser.

2. Findings of the FTC after investigation:

(1) With regard to the technical support and material supplies of the franchiser, the franchising advertisement claimed that the franchiser had "technical support and superior material supplies from multiple countries; and with strategy alliance, the best product and backup services are provided to the franchisees." However, Yang admitted that the enterprise did not have any foreign technology transfer or license of production development. He merely used email and free consultation to inquire about relevant technology with foreign companies. In addition, the enterprise only took the general procurement procedure to purchase foreign materials through online orders.

(2) Yang's enterprises was subject to exclusive venture but was described as a "company" in the advertisement due to the standard format provide by 104

Entrepreneur Website. Yang did not have the intention to mislead. As for the franchiser's actual franchising status, it was found that only one Thai business joined the franchise (only technology transfer) of Potato Cafe. However, Yang did develop new product based upon Thailand's food culture. Therefore, Yang tried to express in the advertisement that this enterprise possessed the ability to develop different flavors inspired by different countries. Such representation was not false, untrue or misleading. Lastly, as for the name of another enterprise used in the contract by the franchiser, it shall be an issue subject to the legitimacy of the subject of the contractual behavior. The Fair Trade Law (FTL) shall not apply.

3. Grounds for Disposition:

(1) The representations regarding the technical support and material supplies stated in the franchiser's advertisement were not consistent with the facts and beyond the acceptable degree of the general trading counterparts. Such representations therefore in violation of Article 21(1) of the FTL governing false, untrue and misleading representations or symbols.

(2) After considering the motive, purpose and anticipated improper profits of the unlawful acts of Yang, Shung Mao of Potato Cafe; 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; 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, in accordance with the fore part of Article 41 of the FTL, ordered Yang to immediately cease the unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT\$) 120,000.

Appendix:

Potato Cafe's Uniform Invoice Number: 98721426

Summarized by Hung, Ying-Chieh; Supervised by Sun, Ya-Chuan

## **Jing-Shen International Enterprise Co., Ltd.**

801st Commissioners' Meeting (2007)

Case: Jing-Shen International Enterprise Co., Ltd. violated the Fair Trade Law by placing false online advertisements to sell AFC products

Key Words: untrue advertisement, health food, agent

Reference: Fair Trade Commission Decision of March 15, 2007 (the 801st Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096062

Industry: Other Retail Sale in General Merchandise Stores (4719)

Relevant Laws: Article 21(1) of the Fair Trade Law

### Summary:

1. This case originated from a complaint letter filed by Yusen Biotechnology Co., Ltd. (hereinafter referred to as the "Complainant") stating that Jing-Shen International Enterprise Co., Ltd. (hereinafter referred to as "Jing-Shen") violated Article 21 of the Fair Trade Law by engaging in the following acts: The Complainant was the exclusive agent authorized by Japanese AFC company (hereinafter referred to as "AFC") in Taiwan. It was found that Jing-Shen placed an advertisement on the website <http://www.multicare.com.tw> to sell AFC's products and described itself as a legal agent or associate of AFC in the organizational chart of Multicare. Jing-Shen's act had affected the legitimacy of the Complainant's business as the exclusive agency. In addition, Jing-Shen was selling the products at different prices and confused the market order. Jing-Shen's acts allowed the consumer to purchase health food without guarantee and caused uncertain risks of claim. Such acts should in violation of Article 21 of the Fair Trade Law (FTL) governing false, untrue or misleading representations. The Fair Trade Commission (FTC) also learned that Jing-Shen stated on the aforesaid advertisement that "AFC the only health food available in the market in Japan," which might be in violation of the FTL. The FTC therefore included all of the accused acts of violation in the investigation.

2. Jing-Shen claimed that the organizational chart of Multicare on its website was

to show that the products it sold were from AFC. Jing-Shen further stated that the term “only” used in the statement of “AFC the only health food available in the market in Japan” in the advertisement meant that AFC was the only system under AMS Group. However, after reviewing the copies of documentations provided by Jing-Shen regarding imported products and goods lists, it was found that these documentations listed the items as cosmetics without content descriptions, or with the name “Suzuki Toshiaki” but without the stamps or certifications of AFC. Said documentations were not sufficient to prove the relationship between Suzuki Toshiaki and AFC or that Suzuki Toshiaki was a lawful agent of AFC. The advertisement in question had caused the public to believe that Jing-Shen was AFC’s agent, distributor or branch or shared a certain relationship with AFC. Such advertisement was also sufficient to make the general public with common knowledge and experience to wrongfully believe such relationship and further make decisions to trade. In addition, Jing-Shen explained that the statement of “AFC the only health food available in the market in Japan” was used to show the consumer that the products were manufactured, sold, and legally imported by a Japanese company instead of a family factory without clear sources. Jing-Shen further claimed that the term “only” used in the statement merely referred to the fact that AFC was the only system under AMS Group and was only selling health food in Japan. Upon the common sense of the general consumer, the statement of “AFC the only health food available in the market in Japan” should not only refer to the aforesaid facts claimed by Jing-Shen. In conclusion, the organizational chart of Multicare and the statement of “AFC the only health food available in the market in Japan” placed by Jing-Shen were false, untrue and misleading representations in violation of Article 21(1) of the FTL.

3. After considering the motive, purpose and anticipated improper profits of the unlawful acts of Jing-Shen; 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; the conditions of past violations; the remorse shown for the acts and attitude of cooperation in the investigation; and other factors, the FTC, in accordance with the fore part of Article

41 of the FTL, ordered Jing-Shen to immediately cease the aforesaid unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT\$) 80,000.

Appendix:

Jing-Shen International Enterprise Co., Ltd.'s Uniform Invoice Number: 27701841

Summarized by Chiu, Yu-Chih; Supervised by Yeh, Tien-Fu

### **All Chinese Internet Inc.**

803rd Commissioners' Meeting (2007)

Case: All Chinese Internet Inc. violated the Fair Trade Law by placing false online advertisements and replicating another's business database

Key Words: false, untrue, misleading, business secret, recruitment website

Reference: Fair Trade Commission Decision of March 29, 2007 (the 803rd Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096071

Industry: Other Information Supply Services Not Elsewhere Classified (6399)

Relevant Laws: Articles 19 and 21 of the Fair Trade Law

Summary:

1. This case originated from a complaint letter (Exhibit A) filed by 104 Corporation (hereinafter referred to as the "Complainant") stating that: All Chinese Internet Inc. (hereinafter referred to as the "Respondent") had banners on the top of its homepages of "1111 Job Bank" and "1111 Entrepreneurship & Franchising" saying "1111 Job Bank – the biggest job bank of the nation," "1111 Entrepreneurship & Franchising – the biggest entrepreneurship & franchising website of the nation," and "up to 2004, 1111 website has accumulated a growth of resumes of 2,120,000; has 6,000,000 web pages reviewed daily; has more than 2,120,000 resumes; has more

than 510,000 visitors everyday; has 4,000 new valid resumes added everyday; has more than 22,000 companies simultaneously using talent inquiry services online; and has more than 80,000 people simultaneously searching for jobs online.” However, the aforesaid data was inconsistent with the survey report and the internal analysis report of the Respondent and therefore possibly untrue. In addition, in order to increase resumes of job seekers for its own website, since 2002, the Respondent had instructed its employees, Mr. Cheng and other three people, to connect to the Complainant's website and retrieve the IDs and password of seven of Complainant's contracted clients. The Respondent inappropriately used aforesaid information to view resumes of those job seekers who registered with the Complainant and replicate the same. The Respondent had engaged in unfair competition in violation of Article 19(v) of the Fair Trade Law (FTL).

2. It was found that the Respondent, in order to increase resumes of job seekers for its own website, had instructed its employees since 2002 to improperly retrieve the IDs and password of seven of the Complainant's business clients who paid for talent search. The Respondent also inappropriately used the aforesaid IDs and password to log into the Complainant's computer and view tens of thousands of resumes of those job seekers who registered with the Complainant. The Respondent further exported and replicated the data and downloaded the same in its computer. After screening the aforesaid data, the Respondent made a list of those who did not register with the Respondent and submitted the same to the customer service representatives to send email and invite these people to register with the Respondent for the purpose of increasing the Respondent's job seeker database. The aforementioned fact was determined by the Taipei District Court 93 Decision Yi-Tzu No. 1431 and interrogation records provided by the interested parties at the police station.

3. With regard to the issue that whether the “job seeker’s information registered with a recruitment website” shall fall under Article 19(v) of the FTL providing “the secret of production and sales, information concerning trading counterparts or other technology related secret of any other enterprise,” most scholars suggested to refer to Article 2 of

the Trade Secret Act which provides the descriptions of the “innovation,” “value,” and “secrecy.” Present recruitment websites are highly competitive. Based upon the consideration of privacy and security, resumes registered by job seekers with the recruitment websites shall kept private and not searchable by the general public. Recruitment websites shall keep job seekers’ private information, such as names, telephone numbers, email addresses, and addresses, confidential. After sorting and arranging the information according to the professions, job seekers' information may be easy for the recruitment websites’ trading counterparts to use. The editing and establishment of human resources database and the convenience to search are important factors that enterprises who are seeking for talents would consider prior to paying the recruitment websites for such services. The more the recruitment websites are dedicated to the sorting process of the job seekers' information, the more the trading counterparts would pay for the account and using the password. Since the trading counterparts would have to separately purchase a “password” to log in as a “member” to utilize the job seekers’ information sorted and arranged by the recruitment websites, such transaction shall meet the description of “innovation” and “secrecy.” Furthermore, according to the survey on charges of 10 recruitment websites with the highest sales amount in 2005, those 10 recruitment websites all provided job seekers free resume publishing and various job seeking services while enterprises looking for talents would have to pay to obtain complete resume or interview or hire job seekers. Enterprises that are looking for talents depend on the completeness and convenience of job seekers' information before they decide to pay a particular recruitment business for its services. Therefore, said information is considered information of production and sales which contains economic value to the recruitment businesses. It was also found that the trading counterparts of the Complainant must sign a contract and pay for services before they can obtain their membership and password. The trading counterparts should use a pass code given by the Complainant to log in their own webpage to search in the talent database for detailed resumes of all job seekers. Such information economic value of exclusiveness based upon whether such information is paid for or not. Additionally, in light of the privacy of the job seekers and the security of the information, the recruitment websites keep the information confidential through the

mechanism of using password. Those who do not sign the contract with the Complainant would not be able to obtain job seekers' personal information contained in an exclusive webpage. Therefore, the Complainant had taken reasonable measures of confidentiality, and the information shall meet the descriptions of "secrecy." Based upon the aforementioned points, the Respondent's act to employ an improper method to obtain job seekers' information and use the same for its commercial purpose had met the description of using "information of production and sales" set forth in Article 19(v) of the FTL. In conclusion, the Respondent had in violation of Article 19(v) of the FTL by employing an improper method to download and replicate the job seekers' resumes on the Complainant's website, confidential information of production and sales.

4. The Respondent claimed on its web pages "1111 Job Bank – the biggest job bank of the nation," "1111 Entrepreneurship & Franchising – the biggest entrepreneurship & franchising website of the nation." However, according to relevant market survey, there were other enterprises having higher sales amount and market shares than the Respondent. The Respondent did not disclose the target and the basis of such comparison on the web page. Therefore, Internet users could not confirm the accuracy of such representations. The Respondent also admitted that it could not provide any fair and objective statistics to support the truthfulness of such representations. The representations made by the Respondent on its web page were sufficient to mislead the general or relevant public into believing that the Respondent is the number one business in the industry. As a result, such representations are false, untrue and misleading. Additionally, the Respondent claimed that "up to 2004, 1111 website has accumulated a growth of resumes of 2,120,000; has 6,000,000 web pages reviewed daily; has more than 2,120,000 resumes; has more than 510,000 visitors everyday; has 4,000 new effective resumes added everyday; has more than 22,000 companies simultaneously using talent inquiry services online; and has more than 80,000 people simultaneously searching for jobs online." It was found that up to 2004, the number of resumes registered on the Respondent's website was less than 1,950,000. The other evidence provided by the Respondent was the data produced after March 2005 and

could not support the aforesaid claim. The Respondent failed to submit any objective and fair proof to support its claim, meaning that such claim is groundless, and therefore in violation of Article 21(1) applied mutatis mutandis to 21(3).

5. After considering the motive; the degree of the illegal act's harm to market order; the circumstances of the violation; the scale of the enterprise; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC, in accordance with the fore part of Article 41 of the FTL, ordered the Respondent to immediately cease the unlawful act and imposed an administrative fine of New Taiwan Dollars (NT\$) 1,000,000 for the violation of Article 19(v) and NT\$500,000 for the violation of Article 21(1) applied mutatis mutandis to 21(3). The total amount of the administrative fines imposed was NT\$1,500,000.

Appendix:

All Chinese Internet Inc.'s Uniform Invoice Number: 16776387

Summarized by Lee, Wan-Chun; Supervised by Wu, Lieh-Ling

## **Hitachi Sales Corporation of Taiwan**

809th Commissioners' Meeting (2007)

Case: Hitachi Sales Corporation of Taiwan violated Article 21(1) of the Fair Trade Law by placing untrue online advertisements to sell washing machines

Key Words: false, untrue, misleading, washing machine

Reference: Fair Trade Commission Decision of May 10, 2007 (the 809th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096092

Industry: Wholesale of Electrical Household Appliances (4561)

Relevant Laws: Article 21(1) of the Fair Trade Law

Summary:

1. In consideration of the circumstance that the representations in the advertisements to sell washing machines did not often conform to the labels of the products and there could be in violations of the Fair Trade Law (FTL), the Fair Trade Commission (FTC) initiated an *ex officio* investigation to determine whether the representations in the advertisements to sell branded washing machines violated the provisions of the FTL. After investigations, it was found that the representation, “Large Two-Bowl Combination PA100AS 10kg,” in the online advertisement of Hitachi Sales Corporation of Taiwan (hereinafter referred to as “Hitachi Taiwan Corp.”) was untrue.

2. It was found that washing machines fell under the types of articles which must be inspected by the Ministry of Economic Affairs. In accordance with the letter issued by the Bureau of Standards, Metrology and Inspection, the Ministry of Economic Affairs, Hitachi Taiwan Corp. had nine models of washing machines which passed the inspection of the same Bureau, and these models did not include “PA100AS.” It was also found that for the washing machines concerned, the Labeling Standard for Electric Alliances provided by Hitachi Taiwan Corp. and the Registration Certificate for Product Inspection issued by the said Bureau were attributed to the model “PS100AS,” and not “PA100AS.” Additionally, Hitachi Taiwan Corp. admitted that it did not sell the model “PA100AS”; “PA100AS” in the website should be referred to “PS100AS” and there was an error in the website. Furthermore, it provided the evidence, its advertisements in the United Daily News dated July 21, 2005 and July 2006. Therefore, the part which showed a publication error in the website and that “PA100AS” should be referred to “PS100AS” was with grounds.

3. It was found that “PS100AS” in the Labeling Standard for Electric Alliances was labeled, “Wash: 8kg Hydro-Extraction: 8kg.” It was also found that the letter issued by the said Bureau stated that the maximum washing capacity and the maximum hydro-extraction capacity of “PS100AS” were 8kg respectively – it could be proved by the Arrangement Table of Washing Capacity and Dry Linen Capacity

for a portion of models produced by Hitachi Taiwan Corp and Registration Certificate for Product Inspection for the said model provided by the said Bureau. Therefore, the maximum washing capacity and the maximum hydro-extraction capacity of “PS100AS” shall be all together 8kg. As the major reference, the loading wash capacity, affects largely on consumers prior to making their decisions, Hitachi Taiwan Corp. which is the importer of the products concerned and knows the loading wash capacity of the products concerned quite well, shall truly represent information that is related to the products. However, Hitachi Taiwan Corp. presented the maximum washing capacity and the maximum hydro-extraction capacity as 10kg respectively instead of 8kg in the website – it did not label the actual loading capacity for both washing and hydro-extraction, which was 8kg as approved by the said Bureau. Obviously, such a representation did not match the fact. It was additionally found that, although Hitachi Taiwan Corp. corrected the error in the website concerned after finding it on July 24, 2006, the inconsistency between the online representation and the fact was still a reality. In conclusion, the Hitachi Taiwan Corp.’s online representation, “Large Two-Bowl Combination PA100AS 10kg,” was false, untrue and misleading and it was sufficient to find Hitachi Taiwan Corp. a violation of Article 21(1) of the FTL.

4. After considering the motive of the unlawful act of Hitachi Taiwan Corp. the degree of the illegal act's harm, the circumstances of the violation, the scale of operation, and the attitude after the investigation, the FTC ordered Hitachi Taiwan Corp. to immediately cease the aforesaid unlawful act and imposed an administrative fine of New Taiwan Dollars (NT\$) 300,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:

Hitachi Sales Corporation of Taiwan's Uniform Invoice Number: 23526766

Summarized by Lee, Wan-Chun; Supervised by WU, Lieh-Ling

## **Han-Shen Development Co. Ltd.**

813th Commissioners' Meeting (2007)

Case: Poya-Living-Mart Co. Ltd. violated Article 21 of the Fair Trade Law by publishing false, untrue and misleading sales messages about the contents of the products in the advertisement catalog

Key Words: draw, scratch card, catalog

Reference: Fair Trade Commission Decision of June 7, 2007 (the 813th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096108

Industry: Other Retail Sale in General Merchandise Stores (4719)

Relevant Laws: Article 21(1) of the Fair Trade Law

### Summary:

1. This case originated from the general public's complaint that: On November 11, 2006, the general public found on-the-spot at the inauguration of Poya Living Mart of Poya-Living-Mart Co. Ltd. (hereinafter referred to as "Poya Company"), the shop in Yu-Chang, Kaohsiung, that Poya Company held the scratch card and lottery drawing activities to celebrate the 200th anniversary of Colgate's establishment. Nevertheless, such activities already expired on October 31, 2006.

2. It was found that Poya Company published the message on a special offer, "Celebration of the 200th Anniversary of Colgate's Establishment," and the promotion messages, "The first chance: Have activities for free if you buy," "The second chance: Scratch card," and "The third chance: Draw," for "people who purchase Colgate oral care products for more than New Taiwan Dollars (NT\$) 99 in this shop" in the said company's promotion catalog dated from November 11 to December 5. The impression conveyed by the advertisement concerned was that if a person purchases Colgate oral care products for more than NT\$99, he can participate in the gift or lottery drawing activity; it was however found that the scratch card which showed the purchase conditions and which was provided by Poya Company had the phrases, "From now to October 31, 2006, if a person purchases Colgate oral care products for more than NT\$99 in this shop, he can receive one scratch card and

will have the chance to win a Colgate Motion Whitening Battery-Powered Toothbrush” and “The draw: From now to October 31, 2006 ....” It was found that the catalog concerned was applied from November 11 to December 5, and the lottery drawing or scratch card activity of the products concerned had ended before the advertisement catalogs were printed and distributed. It was also found that that a prizewinner must mail the original copy of the scratch card and the uniform invoice before November 5, 2006 to Poya Company to receive the gift stated in the card; before October 31, 2006, others, however, can mail the original copies of the cards to Poya Company for the draw. However, Poya Company only published the messages on the lottery drawing and scratch card activities for the concerned promotion after the expiry date of the activities, as it purported to seize its trading opportunities and to elicit consumers to trade by distributing the bait advertisement. Even if consumers had the scratch card, they could not receive gifts (if they won). It was obvious that Poya Company could not perform its obligation derived from the advertisement, which was to confer the prizes after the conclusion of transactions. Additionally, Poya Company argued that the design of the advertisement concerned was based on the products provided by the goods providers and the objects stated in the scratch card; however, it was found that the table on the arrival date of Colgate oral care products in concerned provided by Poya Company showed that Poya Company stocked the shop with the products before the expiry date of the activities concerned – Poya Company should know the expiry date of the activities before the advertisement was available. As Poya Company was the principal of the advertisement on the products concerned, it had the obligations to check the related operation affairs prior to the publication of the advertisement and to ensure that the representations were true at the time of advertising. It could not be immune from its obligations based on the ground that the lottery drawing and scratch card activities concerned were provided by the goods providers. Therefore, based on the existing evidence, the contents of the products conveyed by the advertisement designed by Poya Company were false, untrue and misleading and Poya Company in violation of Article 21(1) of the FTL.

3. After considering the motive, the degree and duration of the unlawful acts of

Poya Company and the scale of operation, the Fair Trade Commission (FTC), in accordance with the fore part of Article 41 of the FTL, ordered Poya Company to immediately cease the unlawful acts and imposed an administrative fine of NT\$250,000.

Appendix:

Poya-Living-Mart Co. Ltd.'s Uniform Invoice Number: 97151664

Summarized by Chu, Hsing-Pang; Supervised by Wu, Lieh-Ling

## **Tung-Hao Corporation**

813th Commissioners' Meeting (2007)

Case: Ms. Chuang, Yun-Ni and Tung-Hao Corporation violated Article 21 of the Fair Trade Law by placing untrue sales information on Yahoo's auction site

Key Words: car monitor, untrue advertisement, auction site

Reference: Fair Trade Commission Decision of June 7, 2007 (the 813th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 111

Industry: Liquid Crystal Panel and Components Manufacturing (2641)

Relevant Laws: Article 21 of the Fair Trade Law

Summary:

1. This case originated from a complaint that the main business of Ms. Lee, Shu-Hua, who was in charge of Chen Han Chiu Chiu Car Audio was the wholesale and retail of car TV and audio; she invented "APOLLO" car monitors (hereinafter referred to as "products concerned") and sold them (the current price is New Taiwan Dollars (NT\$) 6,500) by herself while she put the third party, Dah Jing Enterprise Co. Ltd. (hereinafter referred to as "Dah Jing"), in charge of manufacturing the products

concered. Tung-Hao Corporation and Ms. Lee were in the same business and they competed to each other. Surprisingly, Tung-Hao Corporation knew well that it did not have the products concered for sale, it however placed related sales messages on Yahoo's auction site and claimed, "We have four types of monitors (AVT IM-621, SAMSEN, APOLLO, necvox 7069) for your choices; each of the items costs NT\$4,500, and we will assemble it for you without extra charges." Among these types of monitors, there was one type which was the product concered; when a consumer made inquiries on such a product, Tung-Hao Corporation responded by shuffling that "... is made by Dah Jing in Chunghua; as its picture quality is average, why not choose 7069 (it was the car monitor of another brand). The mechanical structure of the APOLLO products in this batch has some imperfection, and the products have been retruned to the factory for handling ...." The aforesaid act of Tung-Hao Corporation made Ms. Lee's original clients or potential clients doubt about the products and resulted in affecting Ms. Lee's business and its commercial reputation severely.

2. Findings of the FTC after investigation: Ms. Lee applied to the Intellectual Property Office for the examination of the trademark, "SUPER APOLLO," on March 10, 2006 and applied the trademark concered for the products, "digital TV receptors, car monitors, raw speakers" and entrusted Dah Jing to manufacture these products. After the manufacture, Dah Jing, sent the goods directly to four stores managed by Ms. Lee for sale, or Ms. Lee used the name of the seller, "Chiu Chiu Car Audio" on the auction site to sell these products – she did not authorize any resellers to sell the products concered, and Dah Jing also did not send the products in the brand "APOLLO" to other parties for sale. On the objective term, Tung-Hao Corporation could not have acquired APOLLO products concered for sale.

3. Grounds for Disposition:

(1) Sales messages, "We have four types of monitors (AVT IM-621, SAMSEN, APOLLO, necvox 7069) for your choices; each of the items costs NT\$ 4,500, and we will assemble it for you without extra charges," which were placed on Yahoo's

auction site by Tung-Hao Corporation misled consumers that Tung-Hao Corporation had APOLLO products concerned for sale. The representations were therefore false, untrue and misleading, for the grounds that Ms. Lee did not authorize any resellers to sell the products concerned, and Dah Jing also did not send the products in the brand “APOLLO” to other parties for sale. Additionally, Tung-Hao Corporation used this advertisement to draw consumers for trade and left a message in the website that the mechanical structure of the said products had some imperfection at the time that a consumer made an inquiry on such products. It even recommended the consumer to purchase products of the other brands. These acts were sufficient to mislead consumers and affect their decisions. Therefore, Tung-Hao Corporation in violation of Article 21(1) of the FTL.

(2) After considering the factors, operating revenue, the motive of the act, the procedures that affect trading order and anticipated improper profits of Tung-Hao Corporation; the duration of the violations and the attitude after the violations, the FTC ordered Tung-Hao Corporation to cease the unlawful act and imposed an administrative fine of NT\$120,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:

Tung-Hao Corporation's Uniform Invoice Number: 13922801

Summarized by Chen, Shu-Hua; Supervised by Liou, Chi-Jung

## **Han-Shen Development Co. Ltd.**

815th Commissioners' Meeting (2007)

Case: Han-Shen Development Co. Ltd. violated Article 21 of the Fair Trade Law by publishing untrue construction advertisement on “Heirloom Castle”

Key Words: Gold Lion Award in Architecture, warranty, photo

Reference: Fair Trade Commission Decision of June 21, 2007 (the 815th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096115

Industry: Buildings Construction (4100)

Relevant Laws: Article 21(1) of the Fair Trade Law

### Summary:

1. This case originated from complaint letters filed by the general public stating that: Han-Shen Development Co. Ltd. (hereinafter referred to as "Han-Shen Company") had phrases, "Nation Gold Award Villa," "Vice President Lu warranted the quality," and the picture showing that Vice President Lu conferred the Gold Lion Award in Architecture in the construction advertisement on "Heirloom Castle." However, the finding of the investigation showed that the case of the construction work, "Heirloom Castle," had not participated in the competition of Gold Lion Award in Architecture, and in 2002 and 2003, Wei-Jing Construction Co. Ltd. won the Gold Lion Award in Architecture, which was conferred by Vice President Lu. Additionally, the picture on new and fully finished villa in the advertisement was not attributed to "Heirloom Castle" but the case of the construction work, "The Second Generation of Large European Villa."

### 2. Findings of the FTC after investigation:

(1) It was found that, the phrase, "Nation Gold Award Villa, King of the Land in Neipu," the picture showing that Vice President Lu conferred the award (the phrase, "Vice President Lu personally conferred the Gold Lion Award in Architecture," appeared in the picture) and the declaration, "Vice President Lu warranted the quality" in the advertisement concerned were placed under the name of "Heirloom Castle." Its overall impression showed that this case of the construction work won the Gold Lion Award in Architecture, conferred by Vice President Lu personally, and it received confirmation and recommendation from Vice President Lu. The findings of the investigation however showed that this case of the construction work did not participate in the selection activity of Formosa Gold Lion Award in Architecture, and

did not win the related awards. Furthermore, it was found that the advertisement concerned, which showed that Vice President Lu conferred the award, indeed referred to the fact that Vice President Lu conferred the award to Wei-Jing Construction Co. Ltd., and Vice President Lu did not give any warranty to this construction. Such a circumstance was not consistent with the representations of the abovementioned advertisement.

(2) It was further found that the impression conveyed by the advertisement concerned in which the picture on the exterior view of the buildings, with the phrases, “new and fully finished,” and “Picture on Exterior View,” were placed, was that the picture was attributed to “Heirloom Castle.” Nevertheless, the findings of the investigation showed that the villa shown in the picture was attributed to “The Second Generation of Large European Villa,” invested and constructed by Han-Shen Company, not “Heirloom Castle.” Such a circumstance was sufficient to mislead people to believe that the villa in the picture was attributed to “Heirloom Castle.” Therefore, the overall external representations of the advertisement misled the viewers.

### 3. Grounds for Disposition:

(1) As for Han-Shen Company published the phrases, “Nation Gold Award Villa,” “Vice President Lu warranted the quality,” the picture showing that Vice President Lu conferred the Gold Lion Award in Architecture and the picture on the external view of the villa in the construction advertisement, “Heirloom Castle,” the representations of the quality and contents of the products were false, untrue and misleading. Therefore, Han-Shen Company in violation of Article 21(1) of the Fair Trade Law (FTL).

(2) After considering the motive, purpose and anticipated improper profits of the unlawful acts of Han-Shen Company; 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; 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, Han-Shen Company was imposed with an administrative fine of New Taiwan

Dollars (NT\$) 500,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:

Han-Shen Development Co. Ltd.'s Uniform Invoice Number: 22793286

Summarized by Fong, Jyun-Cyuan; Supervised by Shen, Li-Yu

## **Chu Ho Fa Construction Corporation**

821st Commissioners' Meeting (2007)

Case: Chu Ho Fa Construction Corporation violated Article 21 of the Fair Trade Law by publishing an untrue pre-sale housing advertisement on “Li Ching Century Governor”

Key Words: pre-sale housing, turn the balcony into swimming pool

Reference: Fair Trade Commission Decision of August 2, 2007 (the 821st Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096127

Industry: Buildings Construction (4100)

Relevant Laws: Article 21(1) and 41 of the Fair Trade Law

Summary:

1. This case was originated from the complaints filed by the general public and the complaints stated briefly as follows: Chu Ho Fa Construction Corporation (hereinafter referred to as “Chu Ho Fa”) marked the “balcony” as part of the living room in its pre-sale housing advertisement on “Li Ching Century Governor” published in Feng Yuan City, Taichung County, and misled the consumers into believing that they could utilize the balcony legally. The advertisement also claimed that there were an “outdoor swimming door,” a “low temperature garbage disposal room” and an “illuminated spring pool.” However, the swimming pool was only a paddling pool. Also, there was no space that was especially reserved for this purpose

and the advertised low temperature facility was not installed for garbage disposal. Instead, only a dumpcart was located in the corner. Finally, there was basically no spring pool facility.

2. Findings of the FTC after investigation:

(1) Chu Ho Fa drew a TV stand, sofas and a table to mark the range of the living room at the part of living room in the “D5 Floor Plan of Furniture” of the pre-sale housing advertisement on “Li Ching Century Governor.” However, it was found that the part that fell outside the range of the living room marked in dotted lines in the reference diagram was marked as the “balcony” in both of the as-built plan and as built drawing – Chu Ho Fa turned the balcony into part of the living room at the second construction after it acquired the usage license. Chu Ho Fa nevertheless placed the balcony as part of the living room in the aforesaid reference diagram. This act led to the result that the part of the diagram was inconsistent with what was drawn in the as-built plan and as built drawing. Such an act was sufficient to mislead the general consumers into believing that the range of the living room marked in the diagram was all legal. In the same way, Taichung County Government had determined that the balcony that was turned into part of the living room was illegally constructed and it was difficult for a considerable number of consumers to accept the differences between what was presented in (the reference diagram of) the advertisement and what had been constructed. The FTC found that the representations of the contents of the product were false, untrue and misleading.

(2) Chu Ho Fa published twenty-nine public facilities in the advertisement related to the case. Amongst these facilities, the fifth public facility was an “outdoor swimming door,” the ninth a “low temperature garbage disposal room” and the twenty-second an “illuminated spring pool” – the locations of such facilities were marked in the “Master First Floor Plan.” However, it was found that a children’s pool with SPA spouts was located in the “outdoor swimming door” marked in the diagram, all of its size and functions would be difficult from the general perceptions of consumers. In addition, only the dumpcart was placed in the location of the “outdoor swimming door” marked in the diagram, and only eight ground lamps were installed

on-site in the location of the “illuminated spring pool” manifested in the plan. The claims of the company’s advertisement were therefore not consistent with the facts and it was difficult for a considerable number of consumers to accept the differences between what was presented in (the reference diagram of) the advertisement and what had been constructed. The FTC therefore found that the representations of the contents of the product were false, untrue and misleading.

3. Grounds for Disposition:

(1) Chu Ho Fa made the false, untrue and misleading representations on the contents of the product by marking the “balcony” as part of the living room and claiming that there were an “outdoor swimming door,” a “low temperature garbage disposal room” and an “illuminated spring pool” in the area of the “Li Ching Century Governor.” It therefore in violation of Article 21(1) of the Fair Trade Law (FTL).

(2) After considering the motive, purpose and anticipated improper profits of the unlawful acts of Chu Ho Fa; the degree and duration of the unlawful acts' harm to trading order; the benefits derived from 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 have been corrected or warned 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, Chu Ho Fa was therefore imposed with an administrative fine of New Taiwan Dollars (NT\$) 6,000,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:

Chu Ho Fa Construction Corporation's Uniform Invoice Number: 86640027

Summarized by Fong, Jyun-cyuan; supervised by Shen, Li-yu

**Pacific Rehouse Co., Ltd., Chinatrust Real Estate Co.,  
House Real Estate Co. Ltd., Sinyi Real Estate Inc., and Giga House**

821st Commissioners' Meeting (2007)

Case: Pacific Rehouse Co., Ltd., three other real estates agencies, and Giga House were complained for violating the Fair Trade Law by failing to file a pre-merger notification and concerted application to the FTC regarding, respectively, their intentions to merge and form a concerted action, publishing an untrue advertisement and conducting a joint sale

Key Words: real estate agencies, concerted action, joint sale

Reference: Fair Trade Commission Decision of August 2, 2007 (the 821st Commissioners' Meeting); Letter (96) Kung Yi Tzu No. 0960006824 on August 9, 2007

Industry: Real Estate Agencies (6812)

Relevant Laws: Articles 6(1), 11(1), 14 and 21 of the Fair Trade Law

Summary:

1. The case was originated from a complaint filed by Yungching and the complaint stated briefly as follows: Four real estates agencies, Pacific Rehouse Co., Ltd. (hereinafter referred to as "Pacific Rehouse"), Chinatrust Real Estate Co. (hereinafter referred to as "Chinatrust"), House Real Estate Co. Ltd. (hereinafter referred to as "House") and Sinyi Real Estate Inc. (hereinafter referred to as "Sinyi"), and Giga House (hereinafter referred to as "Giga") jointly manufactured the DM Handbooks on "House Information" and published the advertisements on sales of real estates. They allegedly violated the provisions of the Fair Trade Law (FTL).

2. Findings of FTC after investigation: Giga was established on December 14, 2000. Before Fair Trade Commission Interpretation Kung-Yen-Hse-Tzu No. 012 (the joint investment act which is done by more than two existing enterprises to establish a new business is not within the scope of Article 6(1) of the FTL) ceased to apply, it would be difficult to find that the establishment of Giga constituted in violation of Article 11(1) of the FTL. In addition, Giga was established by Sinyi, Pacific Rehouse and Chinatrust through joint investment, and its business was the electronic

information service, which integrated the real estate information online for real estate agencies' and general consumers' search and utilization – the service was to allow the circulation of the information of transactions between consumers and real estate agencies and supply and demand matching, and there was no mechanism that the members must report back the quantity of the success cases. Furthermore, the members did not need to pay other fees other than monthly charges. Nonetheless, “House Information” was the written circulation platform, and the information on houses was provided by the members of the territorial fellowship of Sinyi, Pacific Rehouse, Chinatrust and House. Both Giga and “House Information” were the channels for Pacific Rehouse and three other real estate agencies to provide the diverse services on exchange of information, so as to advance the efficiency or speed of selling real estates.

3. Due to the following reasons, the Commission found that the aforesaid cooperation did not restrain the competition on service remunerations amongst Pacific Rehouse and three other real estate agencies (or other franchise stores), nor eliminating the competition effects of other competitors that did not take part in the cooperation.

(1) After the investigation, it was found that Pacific Rehouse and three other real estate agencies did not jointly decide the amounts of service remunerations. In accordance with the content of the Membership Agreement of Taiwan's Real Estate Portal concluded between Giga and the members, these real estate agencies did not jointly decide the standard of collection of service remuneration. In the same way, the service which was supplied by Giga in this case was to integrate the information on sales of real estate of Pacific Rehouse and three other real estate agencies (or other franchise stores) through the online platform, allow real estate brokers and general consumers to search information on transactions and supply and demand matching – there was no mechanism that the members must report back the quantity of the success cases. It would be difficult to find that their brokers intended to make profits through the online platform provided by Giga, mutually supervising the quantities of success cases or exchanging competitively sensitive information. Besides, the

Membership Agreement of Taiwan's Real Estate Portal did not stipulate clauses to regulate the means of allocation and ratio of service remunerations when such service remunerations were derived from the joint sale of a real estate from different agencies. Hence, it would be difficult to find that Pacific and three other real estate agencies restrained the competition on service remuneration through jointly contracting the means of allocation and ratio of service remunerations. In addition, the service remuneration collected by Pacific Rehouse and three other real estate agencies (or other franchise stores) was all conformed to the standard stipulated by the Department of Land Administration, Ministry of Interior. Sinyi collected 1% and 4% service charges from the buyer and seller respectively; Pacific Rehouse, Chinatrust and House respectively collected 2% and 4% of a concluded price at maximum as the service remuneration from the buyer and seller, and the rates charged by Sinyi were different from the rates charged by Pacific Rehouse, Chinatrust and House respectively. In conclusion, there was still no concrete evidence sufficient to find that Pacific Rehouse and three other real estate agencies involved in contracting to jointly determine service remunerations, or restraining the competition on service remuneration through exchanging competitively sensitive information or other forms of alliances.

(2) It was further found that the three real estate agencies, Pacific Rehouse, Sinyi and Chinatrust established Giga through joint investment. House subsequently became Giga's member. The four said real estate agencies (or other franchise stores) published the information related to the sales of real estates under commission. However, the internet is an open information platform, setting up a website does not require a high standard of technique, or huge capital contribution, hence it is not difficult to enter the market. In the same way, there are many websites which provide information on real estates in the market and they compete each other, such as "Yungching," "House OL," "HouseWeb," "Real Estate Network" and "Qhouse." As there are many market participants and there is no substantial market entry barrier, it would be difficult to find that the act of cooperation amongst Pacific Rehouse and three other real estate agencies was sufficient to obstruct or eliminate other competitors who did not join the cooperation from participating in competition.

4. Furthermore, as for the part, “One agency under commission and multiple listing in four real estate agencies,” as claimed in the advertisement, it was found that the services provided by Giga were to integrate the messages on many real estate agencies’ sales of real estates under commission and allow supply and demand matching, so as to allow consumers to search and utilize. In fact, Giga indeed possessed the characteristics, convergence of joint sale messages and circulation. Therefore, on the basis of the perceptions of the trading counterparts and the element which the FTC based its finding, determining whether there was an indication of joint sale on the basis of the ordinary attention paid by the general public of ordinary knowledge and experiences, it was indeed difficult to find that there were differences between the aforesaid representation or symbol and the facts and hence it was difficult for a considerable number of the general public to accept such misrepresentation or symbol. The content of the service provided by Giga was not meant that a consumer was only required to entrust one of the four real estate agencies, and he would receive services from the other three agencies to sell the real estate. In terms of the degree, this fact was indeed different from the meaning of “joint sale service” as defined in the “Explanation of Joint Sale Administered by Real Estate Agencies.” Nevertheless, the purpose of the aforesaid explanation is to regulate the real estate agencies that form an alliance or merger through the practice of joint sale and such formation results in the anti-competition effect, restraining market competition. Therefore, the joint sale service in the Explanation is to limit to the transaction types, a number of real estate agencies jointly search buyers, and the agent who looks for clients and the agent who sells houses may be from different agencies; nevertheless, it does not exhaust all transaction types. In addition, as the term, "joint sale," still includes many reasonable interpretations, the FTC could not find that the representation or symbol at issue was false, untrue and misleading, on the basis of the difference between the contents of the services provided by Giga and the term, “joint sale,” defined in the aforesaid Explanation. Nevertheless, in order to avoid future occurrence of similar competition or trade disputes, the Commission issued a letter to request Giga to notify its members that the members should avoid using any representations or symbols which will likely mislead consumers into believing that

entrusting one real estate agency to sell a real estate will get four real estate agencies to sell it under the same commission.

Summarized by Hsu, Hsiu-feng; supervised by Liao, Hsien-chou

## **Hui Kang Co. Ltd.**

823rd Commissioners' Meeting (2007)

Case: Hui Kang Co. Ltd. violated Article 21 of the Fair Trade Law by publishing an untrue advertisement of "with every NT\$ 200 of purchases, the customer gets cash vouchers to the value of NT\$ 200 for free"

Key Words: anniversary discounts, cash voucher for goods, direct discount

Reference: Fair Trade Commission Decision of August 16, 2007 (the 823rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096134

Industry: Retail Sale in General Merchandise Stores with Food, Beverages or Tobacco Predominating (4711)

Relevant Laws: Article 21(1) and 41 of the Fair Trade Law

### Summary:

1. This case was originated from the complaints filed by emails from the general public and the complaints stated briefly as follows: Hui Kang Co. Ltd. held an anniversary discount at the Wellcome. Its advertisement claimed that "with every New Taiwan Dollars (NT\$) 200 of purchases, the customer gets cash vouchers for the value of NT\$200 for free," and only the date restriction was published in the shop front poster. Following the advertisement, the complainants acquired the cash vouchers after NT\$200 of purchases, the use of the vouchers was however restricted to one voucher per week after the end of the anniversary sale, as published in the vouchers. The face value of each voucher was NT\$20 and the use of each voucher

was subject to the restriction that a consumer must purchase a product of certain brands in the amount of NT\$200.

2. Findings of the FTC after investigation:

(1) Hui Kang Co. Ltd. held an activity which was that “with every NT\$200 of purchases, the customer gets cash vouchers to the value of NT\$200 for free” from June 8 to 14, 2007 and the step published in the advertisement was that “a consumer can get a pack of cash vouchers up to NT\$200 in total for a single transaction above NT\$200.” However, with an actual inspection on the cash vouchers, it is found that there were a total of ten vouchers in each pack of cash vouchers and each voucher had a face value of NT\$20. The conditions, “with this voucher, a consumer can get NT\$ 20 discount for a single transaction of a Nestle product in the amount of NT\$200” and “Period of Use: Friday, June 15 ~ Thursday, June 21, 2007” were published in the first voucher in the pack, the words published in the rest of the vouchers were identical to what was stated in the first voucher, the position of the phrase, a product of the certain brand, and that of the phrase, the period of use, were however changed in the rest of the vouchers. Therefore, after the actual acquisition of the cash vouchers, the consumers, who originally expected that by consuming in the amount of NT\$200, they could get the cash vouchers with the value of NT\$200 in return and used the vouchers, found out that they must re-spend NT\$200 in order to use one voucher with the face value of NT\$20 and get NT\$20 off – it means that a consumer must spend extra NT\$2,000 in total in order to completely use the vouchers he or she received. In other words, the consumer must pay a total of NT\$2,200 in order to truly get the value of the vouchers in return. These facts were significantly different from the perceptions and concepts derived from the representations of the advertisement. Furthermore, the scope of circulation of the cash vouchers was very narrow and the duration of time for using the vouchers was short, and they affected the consumers' judgments on values, as a voucher must be used in a specific week and a consumer must purchase the product of a certain brand. However, Hui Kang Co. Ltd. did not disclose in its advertisement the conditions stated in the vouchers – these facts would indeed result in consumers' misperceptions towards the value of the vouchers. As the

representations of the cash vouchers in the advertisement of Hui Kang Co. Ltd. were false, untrue and misleading, Hui Kang Co. Ltd. was found in violation of Article 21(1) of the FTL.

(2) Although the advertisement related to this case published the sentence of “please refer to the instructions printed on the cash vouchers for the effective date and the rules of using the cash vouchers,” the consumers only learnt about the conditions after they acquired the cash vouchers and their consumption; they could not learn about the conditions at the time of reading the advertisement. The representations of the contents of the original advertisement were still false, untrue and misleading. Hui Kang Co. Ltd. drew the consumers to consume again through using the cash vouchers and did not adequately disclose substantial trade information to them. Such a means of advertising not only led the consumers to misconception at the first transaction, but also made the competitors of the Hui Kang Co. Ltd. to lose their trading opportunities with the consumers who went to Wellcome to consume for the second time. The advertisement related to this case, in this way, also caused adverse effects on market order.

### 3. Grounds for Disposition:

(1) As Hui Kang Co. Ltd. in this case published the advertisement about the sale activity, “with every NT\$200 of purchases, the customer gets cash vouchers to the value of NT\$200 for free” and did not simultaneously disclose in the advertisement any substantial trading information, the conditions and period for the use of the cash vouchers, it was found that the representations of the contents of the free gifts were false, untrue and misleading and Hui Kang Co. Ltd. was found in violation of Article 21(1) of the FTL.

(2) After considering the motive, purpose and anticipated improper profits of the unlawful acts of Hui Kang Co. Ltd.; the degree and duration of the unlawful acts’ harm to trading 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 have been corrected or warned 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 Hui Kang Co. Ltd. to immediately cease the aforementioned unlawful acts on the day after actually receiving the Disposition in accordance with the fore part of Article 41 of the FTL, and Hui Kang Co. Ltd. Ltd was imposed with an administrative fine of NT\$ 400,000.

Appendix:

Hui Kang Co. Ltd.'s Uniform Invoice Number: 22662257

Summarized by Chen, Tsh-hsiang; supervised by Yeh, Tien-fu

## **Taiwan Secom Co., Ltd.**

823rd Commissioners' Meeting (2007)

Case: Taiwan Secom Co., Ltd. violated the Fair Trade Law by publishing an untrue advertisement

Key Words: catalog, security service, only

Reference: Fair Trade Commission Decision of August 16, 2007 (the 823rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096132

Industry: Security Systems Services (8002)

Relevant Laws: Article 21(3) and, *mutatis mutandis*, 21(1) and 41 of the Fair Trade Law

Summary:

1. This case was originated from the complaints filed by the general public and the complaint stated that: Taiwan Secom Co., Ltd. advertised “the only domestic security system mainframe, exclusively for the use of a residence” and “collate the only emergency services program needed by a family,” in the flyers of its “Family Security System” dated November 7, 2005 and March 28, 2006. Nevertheless, other domestic

security enterprises which were in the same line of business of Taiwan Secom Co., Ltd. also supply the same facilities and services. Therefore, the word, “only,” published in the advertisement related to this case was untrue. In accordance with the business practice that an enterprise publishes specific words in an advertisement to represent or symbolize its product or service, such as the objective claims, “only,” “a pioneer,” “the first,” or “the largest,” there should be an objective basis.

2. Findings of the FTC after investigation:

(1) It was found that the impression delivered by the publication of Taiwan Secom Co., Ltd.’s flyers of “Family Security System” dated November 7, 2005 and March 28, 2006 with the words, “the only domestic security system mainframe, exclusively for the use of a residence” and “collate the only emergency services program needed by a family,” was that during the period of using this advertisement (from November 7, 2005 to December 21, 2006), the “Family Security System” service supplied by Taiwan Secom Co., Ltd. was the “only” domestic family security system service in its line of business.

(2) It was found that there was a fact that one of the other domestic security systems service providers, Jih Sun Security Co., Ltd., had supplied residential security services since 1999. In addition, Taiwan Shin Kong Security Co., Ltd. had supplied family security services since April, 2004 and had had security system mainframes, exclusively for the uses of residences. Before the publication of this advertisement (November 7, 2005), the aforesaid two companies had indeed supplied family or residential security services, and these services were identical to the family security services supplied by Taiwan Secom Co., Ltd. Therefore, the family security services and security system mainframes which were exclusively for the uses of residences, as supplied by Taiwan Secom Co., Ltd., were not the only domestic family security services and security system mainframes at the time of the advertisement; in the same way, Taiwan Secom Co., Ltd. admitted that at the time of the advertisement, there was a record that other enterprises that were in the same line of the business of Taiwan Secom Co., Ltd. also supplied the same or similar services.

3. Grounds for Disposition:

(1) While this “Family Security System” service was not the “only” domestic family security system service at the time of the publication of its flyers, Taiwan Secom Co., Ltd. still published “the only domestic security system mainframe, exclusively for the use of a residence” and “collate the only emergency services program needed by a family” in its flyers. The representations made in the flyers were not consistent with the facts and were false, untrue and misleading. Taiwan Secom Co., Ltd. in violation of Article 21(3) and, *mutatis mutandis*, Article 21(1) of the FTL.

(2) After considering the motive of the unlawful acts of Taiwan Secom Co., Ltd., the degree of the unlawful acts’ harm, the circumstances of the violation, the scale of business and the attitude after the investigation, Taiwan Secom Co., Ltd. was ordered to cease the aforesaid unlawful acts in accordance with the fore part of Article 41 of the Fair Trade Law, and it was imposed with an administrative fine of New Taiwan Dollars (NT\$) 300,000.

Appendix:

Taiwan Secom Co., Ltd.’s Uniform Invoice Number: 12148598

Summarized by Yu, Wei-jhen; supervised by Wu, Lich-ling

## 8.2 JUDICIAL CASES

### **Lung Hai Yang Hsing Co. Ltd.**

Taipei Supreme Administrative Court Decision (2007)

Case: Lung Hai Yang Hsing Co. Ltd. filed an appeal against the FTC's decision and the Taipei High Administrative Court Judgment (93) Su Tzu No. 865, however, the Supreme Administrative Court dismissed the appeal

Key Words: alcohol products, age, false and true

Reference: Taipei Supreme Administrative Court Decision (96)

Industry: Wholesale of Tobacco Products and Alcoholic Beverages (4546)

Relevant Laws: Article 21(1) and 41 of the Fair Trade Law

#### Summary:

1. The Respondent (the Fair Trade Commission) imposed a penalty against the Appellant (Lung Hai Yang Hsing Co. Ltd.) in accordance with Disposition (92) Kung Ch'u Tzu No. 092148 and the fore part of Article 41 of the Fair Trade Law (FTL), based on the findings of its investigation initiated upon the complaint filed by the "Scotch Whisky Association." The Appellant imported and sold KINGCAESAR 35 Years Old. However, the alcohol products contained in the Appellant's KINGCAESAR gift set was found by the Respondent in violation of Article 21(1) of the FTL by placing false, untrue and misleading representations regarding the age of KINGCAESAR 35 Years Old. The Appellant was dissatisfied with the decision and filed a petition and an administrative action. They were however dismissed by the court. The Appellant therefore filed this administrative action.

2. The certificate of origin of "KINGCAESAR 35 Years Old" submitted by the Appellant only contained the endorsement to prove the origin of the product and the place of production which was Philippines, as well as the name and weight of this product, it however did not show whether the product had undergone any experiments or inspections or not, and could not prove that the age of the alcohol product in case was identical to the time presented by the name of the product. The information recorded in the "CERTIFICATE OF ORIGIN" was sufficient to simply render such a document as the document of proof of origin. Although the Appellant stated that

such an evidentiary document contained the words, 35 YEARS OLD, it was found that the whole text in the document was to indicate the name and weight of the product – the phrase, “ ‘said to contain’ 490 cases KINGCAESAR 35 YEARS OLD,” which was recorded in the document was simply a representation of the name of the product and it was obviously that it was not meant to prove (the age of the product). Therefore, the evidence offered by the Appellant for the purpose of proving that the age of the alcohol product in case was indeed 35 years old could not be adopted and thus the court of the first instance found that the confirmation of fact did not contravene the rules of evidence.

3. Furthermore, the “rules of origin” provided by the Agreement on Rules of Origin of the WTO is followed mainly by Member states of the WTO to acknowledge and to determine the “origin” of a good while they apply their domestic applicable law, regulation and administrative decisions of general effects. The above-mentioned agreement of WTO is merely a regulation which harmonizes each Member's acknowledgement towards the “origin,” it however is not connected to the certification of age. Therefore, the argument offered by the Appellant that whether the factories of the WTO member states needed to submit the evidence regarding the age of the product was indeed irrelevant in this case. The court of first instance found that the applicable laws and orders were not in violation of the rule of the primacy of the law.

4. After examining all of the arguments considered by the court of the first instance and the findings of the evidence gathered from the investigation, the original penalty and the decision of the petition were all correct and were upheld. It was also correct to dismiss the pleading of the Appellant. As it was difficult to hold that the Appellant's argument, accusing that the original decision was inconsistent with laws and requested for cancellation of the original decision, has any ground. The appeal shall be denied.

Appendix:

Lung Hai Yang Hsing Co. Ltd.'s Uniform Invoice Number: 97293586

Summarized by Lai, Chia-ching; supervised by Lee, Wen-show

## Chapter 9

# Damages to Business Reputation

### Camangi Corporation

818th Commissioners' Meeting (2007)

Case: Camangi Corporation was complained for violating the Fair Trade Law by improperly notifying or issuing warning letters to the trading counterparts of the competitor

Key Words: web call, infringement of the patent right, warning letter

Reference: Fair Trade Commission Decision of July 12, 2007 (the 818th Commissioners' Meeting)

Industry: Telephones and Cellular Phones Manufacturing (2721)

Relevant Laws: Articles 19 , 22 , 24 and 45 of the Fair Trade Law

#### Summary:

1. The complainant of this case was a web-call provider, which supplied web-call software and hardware to terminal servers or dealers. The complained, Camangi Corporation, was also a web-call provider. The complained did not go through the procedures regarding patent infringements – the procedure was that the complained must seek the judgment of the court of the first instance to decide whether the patent rights at issue are infringed, submitted the materials to the professional institute to assess whether there was an infringement and confirm such an infringement, and stated clearly the content and scope of the patent rights and facts which were specific to the infringement. Unexpectedly, through publishing announcement on newspapers, notifying by telephone calls and issuing warning letters to the trading counterparts of the complainant from November to December 2006, the complained indicated that the complainant's sales or use of its web call products infringed the complained's patent rights. It requested the complainant to cease to sell and stop the use the products in case. It also indicated on its initiative that the complainant should negotiate with the complained about the matters, cooperation, authorization (on its use or sale), and

purchasing of related products. It was accused that the complained affected the trade order and caused unfair competition.

2. Findings of the FTC after investigation: The complained was the patent right holder of the Intellectual Property Office No. I250771. From November to December 2006, it notified, by telephone calls, SYSAGE Technology Co., Ltd. and the Taipei City Government – both of them were suspected of being involved in selling or using the infringement patent in this case. The contents of the telephone calls were aimed at stating clearly that the web call products that were sold or used by the receivers infringed the patent rights of the complained and the complained kindly requested the receivers to cease their acts. It was further found that the announcement to the industry published by the complained in the Economic Daily News on November 30, 2006 firstly disclosed the patent rights number and patent name, followed by a statement that the internet call service procedure sold by the related internet communication enterprises in the commercial sector might be infringing the above mentioned rights; and it finally called upon the public that they should identify whether the products were legally authorized by the original equipment manufacturers prior to the use of the products. A comprehensive analysis was made on the content of the whole text, and it was determined that the text did not specify the matter that certain competitors infringed the patent rights of the complained. It was finally found that the complaint email letter that was sent to the Taipei City mayor's mailbox on December 4, 2006, and the legal attest letter that was mailed to SYSAGE Technology Co., Ltd. on December 5, 2006 – both of the email and letter contained the extracted content of the aforesaid notice to the industry – were all aimed at notifying the persons who were suspected of being involved in the infringement and requesting their cessation of infringement.

3. Grounds for Disposition: In accordance with the findings of FTC after investigation, the telephone calls made, announcement and notice published and letter issued by the complained were aimed at the cessation of infringement of the patent rights caused to the complained through the receivers' acts of sales and use, they did

not state clearly that other specific competitors other than the receivers did infringe the patent rights of the complained. The FTC found that the contents made in the telephone calls, announcement, notice and letter were the patent holder's notifications of cessation of infringement against the acts of the sellers and users in accordance with the patent laws and regulations. Furthermore, the complained had commissioned a thirty party to assess whether there was an infringement of patent rights before the announcement and notice on November 30, 2006 was published and the warning letter on infringement of patent rights to SYSAGE Technology Co., Ltd. on December 5, 2006 was issued. The result of the assessment was that the website of SYSAGE Technology Co., Ltd. was substantially identical to the legal scope of the patent held by the complained. Therefore, the complained's exercise of its patent rights were proper and were in accordance with the Patent Law and in accordance with Article 45 of the Fair Trade Law (FTL). No provisions of the FTL shall apply. It would be, as a matter of course, difficult to find the complained in violation of Articles 19(i) and (iii), 22 and 24 of the FTL.

Summarized by Yeh, Su-yen; supervised by Liou, Chi-jung



# Chapter 10

## Multi-level Sales

### 10.1 DECISIONS

#### **Chunghwa Evergreen Technology Ltd.**

792nd Commissioners' Meeting (2007)

Case: Chunghwa Evergreen Technology Ltd. violated the Fair Trade Law by engaging in unlawful multi-level sales activities

Key Words: multi-level sales, participation contract, electronic document

Reference: Fair Trade Commission Decision of January 11, 2007 (the 792nd Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096002

Industry: Direct Selling Establishments (4872)

Relevant Laws: Article 23 of the Fair Trade Law

#### Summary:

1. According to the Fair Trade Commission (FTC) Multi-level Sales Enterprise Supervision Program of FTC 2006 administrative plans, the supervising units shall select partial multi-level sales enterprises for inspection. Enterprises selected shall include those who sell intangible products, have reported but not yet completed the procedure, have been complained by the public, have abnormal sales amount, or have not been inspected over a certain period of time. Chunghwa Evergreen Technology Ltd. (hereinafter referred to as "Chunghwa Evergreen") was selected because of its reported multi-level sales activities promoting and selling mobile phone numbers.

2. After the operation inspection completed by the FTC personnel at Chunghwa Evergreen's major places of business, it was found that several statutory items to be stated in the participation contracts were written in the form of an electronic document and placed on the website for the participants to view online. These items included conditions of withdrawal by a participant and the rights and obligations

arising from the withdrawal, relevant laws and regulations regarding multi-level sales, refund handling methods under the circumstances where a participant is at fault, and specific default by a participant.

3. Grounds for Disposition: Pursuant to Article 12(2) of the Supervisory Regulations Governing Multi-Level Sales, the writings referred to in the preceding paragraph may not be in the form of an electronic document. Though Chunghwa Evergreen did enter written participation contracts with its participants, partial statutory items to be stated in the written contract were done in the form of an electronic document. This was proved by the information obtained from the operation inspection.

4. After considering the motive, purpose and anticipated improper profits of the unlawful acts of Chunghwa Evergreen; the degree and duration of the unlawful acts' harm to market order; the benefits derived on account of the unlawful acts; the enterprise scale; the remorse shown for the acts and attitude of cooperation in the investigation; and other factors, the FTC, in accordance with Article 42(3) and the fore part of Article 41 of the Fair Trade Law (FTL), imposed an administrative fine of New Taiwan Dollars (NT\$) 50,000.

Appendix:

Chunghwa Evergreen Technology Ltd.'s Uniform Invoice Number: 27867217

Summarized by Li, Shih-Che; Supervised by Hsu, Hung-Jen

## **Mannatech Incorporated, Taiwan Branch**

793rd Commissioners' Meeting (2006)

Case: Mannatech Incorporated, Taiwan Branch, violated Article 23-2(2) of the Fair Trade Law by failing to purchase the goods back at a price of 90% the original purchase price when a participant terminated the contract and requested to return the goods

Key Words: preferential price, original purchase price, multi-level sales

Reference: Fair Trade Commission Decision of January 18, 2006 (the 793rd Commissioners' Meeting); Disposition (95) Kung Ch'u Tzu No. 096015

Industry: Direct Selling Establishments (4872)

Relevant Laws: Article 23-2(2) of the Fair Trade Law

### Summary:

1. The public (hereinafter referred to as the "Complainant") filed a complaint stating that Mannatech Incorporated, Taiwan Branch (hereinafter referred to as "Mannatech"), failed to handle participants' withdrawal and refund in accordance with Article 23-2 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) There were two products subject to the Complainant's claim, one of which was worth New Taiwan Dollars (NT\$) 5,310 and bought back by Mannatech at NT\$4,779 (90% of the original purchase price), while the other was a package of 28 bottles of goods worth NT\$38,000 and also the dispute between both parties hereto.

(2) According to Mannatech, the original price of the product in question was supposed to be NT\$64,200, if calculated with the direct selling price of the product. The Complainant obtained said product for NT\$38,000, almost 40% off the original price, since the Complainant was a new participant. In addition, the product returned by the Complainant was not in its entirety, only 17 bottles of which were returned. As a result, Mannatech could not refund 90% of the original purchase price, which was NT\$38,000, to buy back the goods returned by the Complainant. Mannatech stated that since 11 bottles were used, the total costs for those 11 bottles should be

NT\$27,400; and Mannatech could only refund 90% of the difference. Therefore, the correct refund amount should be NT\$9,540. The formula is as follows:  $(NT\$38,000 - NT\$27,400) * 90\%$ .

3. Grounds for Disposition:

(1) Pursuant to Article 23-2(2) of the FTL, “within thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level sales enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price; provided that it may be deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.” According to the aforesaid provision, a multi-level sales enterprise shall use the original purchase price of the goods claimed by a participant as the cardinal number. The buy back price shall be 90% of such a cardinal number. However, the bonuses or remuneration paid as well as the amount of the decreased value may be deducted from such an amount. Such a provision was enacted to protect the freedom of a participant to withdraw from a sales organization. Therefore, a multi-level sales enterprise may only perform its buy-back obligation with conditions more preferential than the statutory condition.

(2) The participant of this case (the Complainant) purchased the goods for NT\$38,000 but only returned 17 bottles out of the entire goods. Mannatech calculated the value of the used goods with the direct selling price instead of the original preferential price and deducted such amount from the original purchase price. Since the participant may not request Mannatech to buy back those used goods; and the relevant interests accrued from those used goods were neither relevant to “original purchase price,” the bonus of remuneration accrued from those used goods, nor related to “decreased value,” such an amount was not supposed to be included in the calculation standards set forth in the aforesaid provision. As a result, Mannatech’s calculation was inconsistent with the aforesaid provision.

(3) After considering the motivation, purpose, and expected improper benefit of the unlawful act of Mannatech; the degree of the act’s harm to market order; the duration of the act’s harm to market order; benefits derived on account of the unlawful act; the

scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been corrected or warned by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC ordered Mannatech to immediately cease such unlawful act and imposed an administrative fine of NT\$50,000 in accordance with the fore part of Article 42(2) and 42(3), and the fore part of Article 41 of the FTL.

Appendix:

Mannatech Incorporated, Taiwan Branch's Uniform Invoice Number: 27240778

Summarized by Tu, Cheng-Hsien; Supervised by Hsu, Hung-Jen

## **Shenton Marketing Incorporation**

794th Commissioners' Meeting (2007)

Case: Shenton Marketing Incorporation violated the Fair Trade Law by engaging in unlawful multi-level sales activities

Key Words: multi-level sales, service fee, financial statement

Reference: Fair Trade Commission Decision of January 25, 2007 (the 794th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096018

Industry: Direct Selling Establishments (4872)

Relevant Laws: Articles 23-2 and 23-4 of the Fair Trade Law

Summary:

1. The complainant filed the copy of an attest letter stating that he joined Shenton Marketing Incorporation (hereinafter referred to as "Shenton") in 2005 requested for

withdrawal and refund after receiving the goods that were not conforming to the original agreement and contained defects.?? However, Shenton deducted unreasonable fees from the refund, in possible violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: After the operation inspection completed by the Fair Trade Commission (FTC) personnel at Shenton's major places of business, it was found that Shenton failed to prepare and keep in its main office the audited financial statements for the previous accounting year certified by a Certified Public Accountant. In addition, Shenton listed an unlawful item, "refund service fee," as one of the deductions from the refund in cases where participants withdraw from the organization and request for refunds.

3. Grounds for Disposition:

(1) It was found that Shenton violated Article 23-2(2) of the Fair Trade Law (FTL) by unlawfully deducting "refund service fee" from the refunds when participants withdrew from the organization and requested for refunds upon termination of the contract.

(2) Shenton also submitted a letter stating that it did not have the financial statements certified by a CPA due to the low sales amount earned in 2005. The letter proved Shenton's violation of Article 15(1) of the Supervisory Regulations Governing Multi-Level Sales by failing to prepare at its main office financial statements certified by a Certified Public Accountant.

(3) After considering the motive, purpose and anticipated improper profits of the unlawful acts of Shenton; 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 type of unlawful acts involved in the violation have been corrected or appropriate warnings have been given 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, in accordance with Article 42(2) and (3) and the fore part of Article 41 of

the FTL, imposed an administrative fine of New Taiwan Dollars (NT\$) 230,000.

Appendix:

Shenton Marketing Incorporation's Uniform Invoice Number: 80164779

Summarized by Hsu, Chen; Supervised by Hsu, Hung-Jen

## **Ladder Digital Education Corp.**

806th Commissioners' Meeting (2007)

Case: Ladder Digital Education Corp. violated the Fair Trade Law by failing to purchase back the supply of service when a participant terminated the contract and requested for returning the goods

Key Words: withdraw from the sales and returning of goods, bank loan, installment

Reference: Fair Trade Commission Decision of April 19, 2007 (the 806th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096078

Industry: Direct Selling Establishments (4872)

Relevant Law: Article 23-3(2) of the Fair Trade Law

Summary:

1. This case originated from complaints submitted by the general public to the FTC stating that: Ladder Digital Education Corp. (hereinafter referred to as "Ladder Corporation") re-delayed handling the termination of contracts and the returning of goods. Additionally, after the corporation terminated the contracts and performed the returning of goods, it had not performed its obligation on paying off the participants' bank loans – this incident resulted that the participants still received the notification sent by the banks to urge the payment of overdue bank loans from the participants. Therefore, the corporation had not handled the withdrawal from the sales and

returning of goods in terms of the law.

2. Findings of the FTC after investigation:

(1) It was found that the complaint concerned applied to Ladder Corporation for the returning of goods online on December 6, 2006 and he held the application form as a proof. Ladder Corporation informed the participant of the charges particulars on January 16 and 17, 2007 and the completion for return goods on January 17, 2007, and upon the agreement, Ladder Corporation would refund the participant by check.

(2) It was again found that the Corporation had not returned to the participants the amount of money that bought back the supply of service or fulfilled its promise on paying off the participants' bank loans, after receiving goods possessed by a portion of the participants and necessary charges from the participants, and completing the relevant procedures for return goods. On the other hand, the Corporation paid off the loans for the participants by installment instead, and misled the participants to believe that the enterprise had completed handling the matters related to the withdrawal from the sales and returning of goods. Later, as Ladder Corporation was unable to continue to pay off the loans, the banks immediately urged the payment of overdue bank loans from the participants who believed to have already completed the procedures for return goods, and hence the participants' credit statuses was affected.

3. Grounds for Disposition:

(1) Article 23-2(2) of the Fair Trade Law provides that “[w]ithin thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level sales enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price; provided that it may be deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.” Article 23-3(2) of the same law sets out that “[t]he provisions of the two preceding articles that relate to goods shall apply *mutatis mutandis* to the supply of services.”

(2) The form which was printed after the complaint applied to Ladder Corporation for return goods online on December 6, 2006 and which showed that the application

form was successfully sent, could be regarded as the evidence – a written notice from Ladder Corporation. The Corporation was late in informing the participant of the particulars for returning of goods as the participant only received the notice on January 16 or 17, 2007 – and hence the prescribed period, 30 days, set forth in the aforesaid provision, was expired. It therefore violated Articles 23-3(2) and 23-2(2) of the Fair Trade Law (FTL).

(3) Additionally, as Ladder Corporation required the participant to pay the usage charge and had not paid the participant the amount of money which bought back the service of supply after terminating the participation contract and handling the withdrawal from the sales and returning of goods, it would be difficult to find that Ladder Corporation had performed the obligation for buying back the supply of service held by the participant. In the same way, the Corporation disregarded that the participant's did pay to the bank by installment for the usage of the service of supply, it charged the participant for the usage of the supply of service at the time of returning of goods. Without doubts, the Corporation indeed charged the participant extra fees. In addition, Ladder Corporation did not pay off the actual amount of the participant's bank loan; on its initiative, it paid off the loans on behalf of the participant. These facts showed that the Corporation used the extra fees charged on the participant to pay off the participant's bank loan. It would be even difficult to find that the Corporation had bought back the supply of service held by the participant and completed returning of goods pursuant to the law. It was obvious that Ladder Corporation did not buy back the returning goods and perform its claim on assisting the participant to clear his debt to the bank. The acts of the Corporation violated Articles 23-3(2) and 23-2(2) of the FTL.

(4) After considering the motive, purpose and anticipated improper profits of the unlawful acts of Ladder Corporation; 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 have been corrected or warned 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 imposed an administrative fine of New Taiwan Dollars (NT\$) 5,000,000 on Ladder Corporation in accordance with the fore part of Article 41 of the FTL.

## Appendix

Ladder Digital Education Corp.'s Uniform Invoice Number: 30924402

Summarized by Su, John; Supervised by Hsu, Hung-Jen

## **Power Way International Trading Co., Ltd.**

813rd Commissioners' Meeting (2007)

Case: Power Way International Trading Co. Ltd. violated the Fair Trade Law by engaging in multi-level sales

Key Words: multi-level sales, handling the returning of goods, credit card handling charge, report change, business inspection, participation contract

Reference: Fair Trade Commission Decision of June 7, 2007 (the 813rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096109

Industry: Direct Selling Establishments (4872)

Relevant Laws: Articles 23 - 2(2), 23 - 4, 41 and 42 of the Fair Trade Law; and Articles 7, 12, 14 and 22 of the Supervisory Regulations Governing Multi-Level Sales

## Summary:

1. The Fair Trade Commission (FTC) conducted a business inspection in the main business place of Power Way International Trading Co. Ltd. (hereinafter referred to as "Power Way"). This company could not timely submit the information of the number of the participants, list of the participants, system table, turnover, amounts of

the premiums granted, and details of the sales. Besides, it also needed time to look for the primitive information about the withdrawal of the sales and returning of goods and consequently could not submit the related information timely.

2. Findings of the FTC after investigation: Power Way submitted to the FTC the related information inquired by the FTC business inspection team on August 31, September 11 and 18 and December 6 respectively and went to the Commission to make the statement, which was briefly stated as follows:

(1) The information about the withdrawal of the sales and returning of goods submitted by Power Way showed that four of the participants paid to join the multi-level sales by way of charging to their credit cards. Furthermore, the Respondent deducted the credit card handling charge at the rate of 3% from each of the four participants' refunds while handling the termination of these participants' contracts and refunds.

(2) Power Way had reported to the FTC that its main business place and place of registration. However, it did not report to the Commission the change of the place and the person in charge of the business, as the original place of the company, 9F, No. 787, Jong-Ming S. Road. Taichung City was moved to the place, 9F, No. 789 of the same road in the same city, and the original person in charge, Yuan, Chan-hsun, was changed to the person, Su, Yi-hsiung.

(3) Power Way had never reported to the FTC the information of many product items sold by itself.

(4) The contract concluded between Power Way and each of the four participants did not specify the laws and orders related to multi-level sales, and the means of handling the returning of the goods, all of which could hold the participants liable.

3. Grounds for Disposition:

(1) In accordance with the provisions of the Fair Trade Law regarding a multi-level sales enterprise returns the payments made by a participant to the participant upon his or her withdrawal from the sales and returning of the goods, only three deductions are legal in the contract of Power Way: "any bonus or remuneration already paid to the

participant who had applied the withdrawal from the sales and returning of the goods, due to such a returning of the goods,” “the amount of the decreased value of the goods,” and “If the returned goods ... are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection” from the refund. In any event, any of the legal deductions did not include the credit card handling charge. As Power Way deducted the credit card handling charge at the rate of 3% from each of the participants’ refunds while handling the termination of their contracts and refunds, it was found that the company in violation of Article 23-1(2) of the Fair Trade Law (FTL).

(2) Article 7(1) of the Supervisory Regulations Governing Multi-Level Sales provides that “in the event that there is a change in the content of the information reported by a multi-level sales enterprise, the enterprise shall report the change prior to the execution of it. Nevertheless, if a change occurs in the item reported in accordance with Article 5(1)(i), the change must be reported within 15 days after the change.” The information that are reported to the FTC and recorded in Articles 5(1)(i), (ii) and (vi) of the same Regulations are the representative or person in charge of the enterprise, place of the main business activity, and items, prices, unit cost, purpose, sources of and other matters related to the sales of products. With regard to the acts that Power Way changed the person in charge, place of business, main business place and newly added products did not report the changes to the Commission in accordance with aforesaid law, they were sufficient to render the company a violation of law.

(3) Article 12(1) of the Supervisory Regulations Governing Multi-Level Sales provides that “a multi-level sales enterprise shall conclude a written participation contract with the participant at the time that the participant joins its multi-level sales organization or program; the participation contract shall record the matters provided from Subparagraphs 2 to 8, Paragraph 1 of the preceding Article.” It was also found that a participation contract should also specify laws and orders related to multi-level sales provided by Article 11(1)(iii) of the same Regulations. Furthermore, Article 14 of the Regulations provides that “the multi-level sales enterprise which rescinds or terminates the participation contract because the participant does not conform to

business rules, program or other matters for which the participants can be held liable, shall record in the contract the means of handling the returning of the goods proposed by such a participant.” However, Power Way did not record the abovementioned requirements in its participation contract and consequently Power Way was found that its act constituted a violation of law.

(4) Article 22(1) of the Supervisory Regulations Governing Multi-Level Sales provides that “a multi-level sales enterprise shall prepare and locate the following information in writing in the main business place and record its development in the territory of the Republic of China ...” However, Power Way did not prepare and place the related information in its main business place and could not provide such information for the purpose of FTC inspection. It was found that the company violated the aforesaid provision.

(5) After considering the motive, purpose and anticipated improper profits of the unlawful acts of Power Way; the degree and duration of the unlawful acts' harm to trading order; the benefits derived from its the unlawful acts; the scale of business; and the remorse shown for the acts and attitude of its cooperation in the investigation; and other factors, Power Way was therefore imposed with an administrative fine of New Taiwan Dollars (NT\$) 300,000 in accordance with the fore part of Articles 41 and 42(2) and (3) of the FTL.

Appendix:

Power Way International Trading Co. Ltd.'s Uniform Invoice Number: 27863438

Summarized by Li, Shih-che; supervised by Hsu, Hung-jen

## 10.2 JUDICIAL CASES

### **Mei Yen Li Development Co. Ltd.**

Taipei Supreme Administrative Court Decision (2007)

Case: The Supreme Administrative Court's decision on Mei Yen Li Development Co. Ltd.'s violation of the Fair Trade Law regarding its failure to purchase back the goods at the time a participant terminated the contract and requested for returning the goods

Key Words: multi-level sales, handle the returning of goods, report change

Reference: Taipei Supreme Administrative Court Decision (96) Pan-Tzu No. 801

Industry: Direct Selling Establishments (4872)

Relevant Laws: Article 23-2 of the Fair Trade Law

#### Summary:

1. The defendant, Fair Trade Commission (FTC) (defendant), initiated an *ex officio* investigation pursuant to a complaint and found that the plaintiff, Mei Yen Li Development Co. Ltd. which conducted multi-level sales, failed to purchase back the goods possessed by a participant at a price 90% of the original purchase price when such a participant terminated the contract and requested for returning the goods. Additionally, the plaintiff did not handle reporting change for an increase of business locations within the period prescribed by law; the representations, the proceeding period of and the profits obtained from the successful cases claimed by the plaintiff were false, untrue and misleading. The plaintiff violated the related provisions of the Fair Trade Law (FTL) and the FTC disposed the plaintiff in accordance with Articles 41, 42(2) and (3) of the FTL. The plaintiff was dissatisfied with the decision and filed an administrative action which was denied by the court of first instance. The plaintiff therefore filed this appeal.

2. It was found that the parties who were not in the appeal, Sun, Chih-Chung and seven people, became the participants of the plaintiff's multi-level sales by signing the participation contracts with the plaintiff on February 26, 2002. On May 5, 2003, they

issued legal attest letters to inform the plaintiff of returning the payment of the goods. As the court of first instance assured of these facts, the plaintiff had the obligation to purchase back the goods possessed by the participants who requested for returning the goods in accordance with the purpose of the text set forth in Articles 23-1(1) and 23-2 of the FTL. Therefore, based on the results of arguments regarding evidence, the court of first instance stated in detail that the grounds to convince the judge for violation of Article 23-2 of the Fair Trade Law constituted by the plaintiff failing to purchase back the goods possessed by a participant at a price 90% of the original purchase price in terms of the provision were adequate or there was no improper application of laws or regulations. Therefore, the claim in the appeal accusing that the original decision infringed laws was groundless.

3. Furthermore, it was found that the disposition of the defendant had specified in detail the circumstances which were considered in terms of Article 36 of the Enforcement Rules to the FTL, and these circumstances were: the number of the plaintiff's participants, operation condition, market status, turnover, the degree of coordination in the investigation, the motive, purpose and anticipated improper profits of the unlawful acts, and the degree and duration of the unlawful acts' harm to trading order. The plaintiff was therefore imposed with an administrative fine of NT\$450,000 for the act concerning administration of multi-level sales, and the same amount of fine for its in violation of Article 23-2(2) of the FTL. After basing on the aforesaid disposition concerning the circumstances under consideration and the record of the amount of the fine, and considering every item of the Reference to Considerations for Imposition, the court of first instance found that the defendant's decision on the administrative fine was proper – the grounds were adequate and conformed to logic and legal principles. Therefore, the claim in the appeal accusing that the original decision did not conform to law was groundless. In conclusion, the court of first distance upheld the appeal decision and the original disposition that they conformed to applicable laws in the said case, and the claim of the plaintiff proposed in the court of first instance was denied. It shall be groundless for the plaintiff to employ the claim in the appeal, accusing that the original decision was inconsistent with laws and

requesting for revocation of the original decision, and the claim shall be denied.

Appendix:

Mei Yen Li Development Co. Ltd.'s Uniform Invoice Number: 70606311

Summarized by Lai, Chia-Ching; Supervised by Lee, Wen-Show

# Chapter 11

## Other Deceptive or Obviously Unfair Conducts

### **Far EasTone Telecommunications Co., Ltd.**

791st Commissioners' Meeting (2007)

Case: Far EasTone Telecommunications Co., Ltd. violated Articles 21 and 24 of the Fair Trade Law by issuing untrue news release and comparison advertisements of telecommunications plans

Key Words: telecommunications, rate plans, rates, comparison advertisement

Reference: Fair Trade Commission Decision of January 4, 2007 (the 791st Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096004

Industry: Telecommunications (6100)

Relevant Laws: Article 21(1) and 24 of the Fair Trade Law

#### Summary:

1. This case originated from a complaint letter filed by Taiwan Mobile Co., Ltd. (hereinafter referred to as "Taiwan Mobile") stating that:

(1) Far EasTone Telecommunications Co., Ltd. (hereinafter referred to as "FET") issued a news release and comparison advertisement of telecommunications rate plans (rates comparison chart) on December 29, 2005. Said comparison advertisement compared three plans of three telecommunications enterprises, which were "FET 365," "Taiwan Mobile 268," and "VIBO 386." The items compared were the "Average rates per minute" and the billing amounts when calling "50 minutes per month" and "100 minutes per month" with the aforementioned plans. FET was aware that if calculating with the same standard its average rates would be higher than "Taiwan Mobile 268" and "VIBO 386" but omitted 15% landline calls. Instead, FET stated that its plan "FET 365" had the lowest "average rate" of New Taiwan Dollars (NT\$) 5.1 and the billing amount when calling "100 minutes per month" was NT\$510. FET further wrongly represented the billing amount of "Taiwan Mobile 268" as

NT\$500 when calling “50 minutes per month” and NT\$731 when calling “100 minutes per month.”

(2) In its news release, FET stated that its “FET Double Network 165” had the lowest threshold of all monthly plans of all domestic enterprises. However, the complainant also had a monthly plan “Type 66” while Chunghwa Telecommunications and APBW had “Type 88” monthly plan. Therefore, “FET Double Network 165” was definitely not the monthly plan with the lowest threshold in the domestic market.

## 2. Findings of the FTC after investigation:

(1) FET stated in its rate plans comparison chart that “FET 365” had an average rate of NT\$5.1 per minute (calculated with 50% for FET to FET calls, 35% for calling to other networks, and 15% for calling landlines), and that the billing amount was NT\$510 when calling “100 minutes per month.” According to FET, the average rate of NT\$5.1 per minute of the plan “FET 365” was calculated based upon the preferential rate of “call one minute get one free.” In other words, the rate for making FET to FET calls was NT\$0.04 per second (NT\$2.4 per minute). However, it was found that the calculation of said “call one minute get one free” was only for “the same phone call,” “odd minutes are charged,” and “even minutes are free.” Therefore, if the average rate is NT\$5.1 per minute, the user would have to make phone calls all lasting for even minutes. As a result, upon the user's actual usage of the plan “FET 365,” the average rate per minute is from NT\$5.1 to NT \$6.3. FET's act of employing only the lowest rate, NT\$0.04 per second, to calculate FET to FET calls and stating the result in a comparison advertisement without disclosing the calculation rules would easily cause the general public to wrongly believe that “FET 365” had the lowest rate of the three telecommunications enterprises. In addition, FET stated that the billing amount of “Taiwan Mobile 268” was NT\$500 when calling “50 minute per month” and NT\$731 when calling “100 minutes per month” without including Taiwan Mobile's preference of “first 30 minutes free for Taiwan Mobile to Taiwan Mobile calls.” If said preference was included, the billing amount shall be NT\$355 when calling “50 minutes per month” and NT\$587 when calling “100 minutes per

month.”

(2) FET stated that its “FET Double Network 165” had the lowest threshold in its news release. According to FET, said plan had the lowest threshold of NT\$165 among the monthly plans in the market when applying for a new number. The Monthly fee was able to be offset by calling fees. However, it was found that the complainant provided a monthly plan to new customers as low as NT\$66 a month, which was also able to be offset by calling fees. The plan with lowest monthly fee of Chunghwa Telecommunications was its “Super Value 128” with a monthly fee of NT\$88 which could offset 128 dollars of calling fees. Therefore, FET’s “FET Double Network 165” did not have the lowest threshold.

### 3. Grounds for Disposition:

(1) FET’s wrongly claimed that its “FET Double Network 165” had the lowest threshold and wrongly represented the average rates and billing amounts of “FET 365” and “Taiwan Mobile 268.” FET therefore violated Articles 21 and 24 of the Fair Trade Law (FTL) by making false, untrue and misleading representations regarding its services and services provided by other enterprises.

(2) After considering the motive, purpose and anticipated improper profits of the unlawful acts of FET; 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 type of unlawful acts involved in the violation have been corrected or appropriate warnings have been given 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, in accordance with the fore part of Article 41 of the FTL, imposed an administrative fine of NT\$800,000.

Appendix:

Far Eastone Telecommunications Co., Ltd.'s Uniform Invoice Number: 97179430

Summarized by Fong, Jyun-Cyuan; Supervised by Shen, Li-Yu

## **YOYO Marketing Co., Ltd.**

791st Commissioners' Meeting (2007)

Case: YOYO Marketing Co., Ltd. was complained for violating the Fair Trade Law by using identical or similar appearance and symbol of another's product to sell "PROGEN YOYO Diaper"

Key Words: counterfeit, free ride, diaper

Reference: Fair Trade Commission Decision of January 4, 2007 (the 791st Commissioners' Meeting); letter (96) Kung Er Tzu No.960000165 issued on January 8, 2007

Industry: Wholesale of Other Household Appliance and Supplies (4569)

Relevant Laws: Articles 20 and 24 of the Fair Trade Law

### Summary:

1. The complainant of this case claimed that YOYO Marketing Co., Ltd. (hereinafter referred to as "YOYO") counterfeited the appearance and symbol of its product "YOYO Diaper" and caused confusion to the consumer regarding the source of products. Such act of counterfeiting the appearance and symbol of another's product was obviously an attempt to free ride on another's goodwill and exploit another's efforts, and was sufficient to affect market trading order in violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: The name and image of "YOYO Diaper" sold by the complainant are registered trademark authorized for use with an infant's portrait as the major part of the appearance. The product is sold in different sizes, which are S – 70 diapers, M – 60 diapers, L – 54 diapers, and XL – 48 diapers, and is New Taiwan Dollars (NT\$) 420 per bag. The name and image of "PROGEN YOYO Diaper" are also registered trademark authorized for use. YOYO uses a blue kitten as its major part of the appearance and the character in its marketing campaign and advertisement. This product is sold in sizes, M – 66 diapers, L – 57 diapers, and XL – 51 diapers, and is NT\$269-279 per bag. After comparing with other similar products in the market, both products have the similar package shape and material, which are commonly used by the businesses for such products in the market.

3. Grounds for no Disposition:

(1) The complaint regarding the counterfeit of product name and symbol shall be a dispute of registered trademark and shall be subject to the Ministry of Economic Affairs, the competent authority, upon the conclusion drawn by both the FTC and the Ministry of Economic Affairs on August 20, 1992. The FTL shall not be applicable.

(2) The package and appearance of the complainant's product, YOYO Diaper, has the similar shape and material used by other diaper products in the market. The relevant product information, descriptions of product features, and infant's portrait shall not be able to represent such a product or its source. There is also no other relevant evidence to prove that the product symbol has been commonly known by the relevant enterprises or consumer. Therefore, it is difficult to determine that YOYO has in violation of Article 20(1)(i) of the FTL by counterfeiting the appearance and symbol of "YOYO Diaper" or causing confusion to the product source.

(3) It was also found that though both YOYO Diaper and YOYO's PROGEN YOYO Diaper use similar packaging design that uses rectangular soft plastic bags and is similar to all other baby diaper products in the market, both products give different exterior impressions using different fonts, images, and colors. YOYO uses the symbol that allows the consumer to easily identify the product source and employs blue kitten as the cartoon character in its marketing activities and complimentary items for its promotion. Therefore, it is difficult to say that YOYO has violated Article 24 of the Fair Trade Law by improperly counterfeiting the appearance and symbol of the complainant's product or free riding on another's goodwill and exploit another's efforts.

Summarized by Peng, Wen-Huei; Supervised by Wu, Pi-Ju

## **Kang Hsuan Educational Publishing Corp., Nani Books Corp. and Han Lin Publishing Co. Ltd.**

807th Commissioners' Meeting (2007)

Case: Kang Hsuan Educational Publishing Corp., Nani Books Corp., and Han Lin Publishing Co. Ltd. violated the Fair Trade Law by providing improper gifts in the marketing practices

Key Words: textbook, gift

Reference: Fair Trade Commission Decision of April 26, 2007 (the 807th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096084, 096085 and 096086

Industry: Books Publishing (5813)

Relevant Laws: Article 24 of the Fair Trade Law

### Summary:

1. This case originated from the complaints stating that: A portion of textbooks publishers provided a lot of goods to lure teachers in order to seize the opportunity to sell their textbooks during the period of textbook selection by junior high schools and primary schools in the academic year, 2006 – they constituted improper marketing practices.

2. Findings of the FTC after investigation: During the period of textbook selection by junior high schools and primary schools in the academic year, 2006, Kang Hsuan Educational Publishing Corp. (hereinafter referred to as “Kang Hsuan Corporation”) provided exquisite bicycle models which could be placed for decoration for teachers, Nani Books Corp. (hereinafter referred to as “Nani Corporation”) provided correction seals that had no substantial benefits to teaching and Han Lin Publishing Co. Ltd. (hereinafter referred to as “Han Lin Company”) provided satellite navigation discs and 20 extracurricular books.

3. Grounds for Disposition:

(1) After the market of junior high school textbooks was opened up, it was

continually heard that in order to seize sales opportunities and continue to maintain the market share, publishing enterprises competed to each other in the investment of teaching tools and gifts and adopted the marketing strategy, giving teaching tools and gifts for free. In order to guard against textbooks publishers from constituting improper marketing practices, the FTC stipulated “Fair Trade Commission Policy Statements on the Distribution of Elementary School Textbooks” which lists acts that constitute violations of the Fair Trade Law. The regulation is to be applied and complied by the textbook enterprises.

(2) As under the current system, school teachers have the right to select textbooks, but the purchases are students or parents; therefore, if publishers provide or claim to provide improper gifts for people who have the right to select textbooks, either act may affect the decision-making process and decision of the school teachers. Therefore, in order to ensure fairness in the selection of textbooks, the FTC stipulated in the aforementioned Policy Statement that textbooks publishers were prohibited from providing improper money, items or other economic benefits to the school teachers. As for the issue regarding to whether an item given for free is “improper,” the determining factor is whether the item given for free is irrelevant to the teaching of specific textbooks. If the free item provided by the textbook enterprises is indeed unnecessary for the teaching of specific textbooks, the item given for free does not fall under the supplementary teaching aids which are directly linked to the teaching of specific textbooks.

(3) As the abovementioned gifts, bicycle models, correction seals, satellite navigation discs and extracurricular books provided by three publishers were all indeed unnecessary for teaching and were not directly linked to the teaching of specific textbooks, they showed the circumstance that the publishers concerned provided improper goods for teachers in order to seize the opportunity for teachers' selection of their textbooks – such obviously unfair acts were sufficient to affect trading order and therefore the publishers in violation of Article 24 of the Fair Trade Law (FTL). After considering the relevant factors, the market share of these three enterprises, the types and numbers of past violations, the FTC ordered Kang Hsuan Corporation, Nani Corporation and Han Lin Company to cease the aforesaid unlawful

acts and imposed an administrative fine of New Taiwan Dollars (NT\$) 2,500,000, NT\$2,000,000 and NT\$1,500,000 respectively in accordance with the fore part of Article 41 of the Fair Trade Law.

Appendix:

Kang Hsuan Educational Publishing Corp.'s Uniform Invoice Number: 23142092

Nani Books Corp.'s Uniform Invoice Number: 68461979

Han Lin Publishing Co. Ltd.'s Uniform Invoice Number: 69382361

Summarized by Lin, Hsin-Wen; Supervised by Wu, Pi-Ju

## **MSSCORPS Co. Ltd., TMSCORPS Co. Ltd., Integrated Service Technology Inc., and Pu Shih To Delicacy Co. Ltd.**

808th Commissioners' Meeting (2007)

Case: Msscorps Co. Ltd., Tmscorps Co. Ltd., Integrated Service Technology Inc. and Pu Shih To Delicacy Co. Ltd. were complained for violating the Fair Trade Law by stealing business secrets and helped the former employees avoid the non-competition clause

Key Words: business secrets, non-compete

Reference: Fair Trade Commission Decision of May 3, 2007 (the 808th Commissioners' Meeting)

Industry: Other Technical Testing and Analysis Services (7129)

Relevant Laws: Articles 19(1),(3) and (5), 22 and 24 of the Fair Trade Law

Summary:

1. After the employees of Material Analysis Technology Inc. (hereinafter referred to as "Complainant"), Mr. Chen, Jung-Chin and Mr. Wen, Jen-Chi, left their company in 2005, they were hired by Msscorps Co. Ltd. (hereinafter referred to as "Msscorps")

within two years. On behalf of Msscrops, Mr. Chen did not only conduct business transactions with the trading counterparts of the complainant, but also recruited talents from the complainant grossly by defaming the complainant in the words, “The complainant has no competitiveness after Mr. Chen left office.” In the same way, Mr. Wen provided the information of the trading counterparts for Msscrops. Then, the complainant issued letters to inform Mr. Chen and Mr. Wen that they violated the non-compete clause in the employment contracts. Mr. Wen responded to the complainant that he was employed by Pu Shih To Delicay Co. Ltd. (hereinafter referred to as “Pu Shih To”) at that time and did not violate such a clause. After the complainant conducted an investigation, it is found that Pu Shih To and Tmscorp Co. Ltd. (hereinafter referred to as “Tmscorp”) had the same business address. Thus, the complainant believed that this arrangement was obviously to help Mr. Wen to avoid violating the non-compete clause. Additionally, MSSCORPS and “National Nano Device Laboratories” (hereinafter referred to as “NDL”), National Chiao Tung University, signed a Strategic Alliance Cooperation Agreement on May 8, 2006; the content of its press release and the content of “Operation Plan” of the complainant were however identical – this matter obviously showed that Mr. Chen and Mr. Wen provided this knowledge based on their working experiences in the complainant. In the same way, no technicians in Msscrops had ever worked or conducted researches in the technology industries, TFT-LCD and LCOS; therefore, Msscrops, by stating untrue messages, conducted unfair competition. In conclusion, Msscrops, Tmscorp, Integrated Service Technology Inc. and Pu Shih To in violation of Articles 19(1), (3) and (5), 22, and 24 of the Fair Trade Law (FTL).

## 2. Findings of the FTC after investigation:

(1) Without warnings, Tokyo Electron Ltd. (hereinafter referred to as “TED”) reduced the cases in considerable quantities entrusted to the complainant and planned to cease its cooperation with the complainant. Although this matter was related to the circumstance that Mr. Chen, Jung-Chin made the statement about the loss of samples to TED, his statement was true and the complainant admitted that the statement was related to this case. It was also found that the complainant cleared the matter up with

TED then and both parties continued to cooperate. Additionally, the fact that NDL turned to form a strategic alliance with Msscorps might be a result of Msscorps' endeavor. The fact that enterprises strive for trading opportunities is attributed to general conditions of business operation; and in terms of the existing evidence, it would be difficult to find that they in violation of Articles 19(1) or (3) of the FTL.

(2) The complainant additionally indicated that Msscorps stole its "Operation Plan" and signed a Strategic Alliance Cooperation Agreement with NDL – these matters were evidenced in the news release published by NDL. After examining the content of the news in *casu*, the purpose of the news was to explain Msscorps' business lines and fields of profession; the content of the news, to some extent, was identical with the content of the brief introduction of the complainant. Therefore, it would be difficult to find that such information had practical or potential economic values. As such information was general knowledge known by people working in the said type of information technology business; it would be also difficult to regard such information as "business secrets." Additionally, the complainant claimed that the complained acquired the information of the trading counterparts of the complainant from Mr. Wen, Jen-Chi who gave the name cards to the complained. As a name card only contained the basic information, name, the name of the company and telephone number and hence it did not expose sensitive information concerning competition, the trading relationship between the complainant and the companies, it would be difficult to identify that such a name card contained commercial information which had economic values and the information which was easily obtained in industries, and that Msscorps in violation of Article 19(5) of the FTL.

(3) Additionally, the findings of FTC investigation showed that no concrete evidence had yet been found to prove that Mr. Chen, Jung-Chin disseminated the speech, "The complainant has no competitiveness after Mr. Chen left office" to the trading counterparts of the complainant, and such enterprises had not ceased to trade with the complainant. Additionally, although Mr. Chen's statement on the loss of samples to TED was attributed to a fact, it would be still difficult to find that the complained parties in violation of Article 22 of the FTL.

(4) As for the claim that in order to seize the trading opportunities with the trading

counterparts of the complainant, the complained parties jointly helped Mr. Chen, Jung-Chin and Mr. Wen, Jen-Chi to avoid the non-compete clause as provided under the employment contracts, the decision on whether two people violate the clause is still unsure as the issue falls under the scope of civil law and the case is pending at the civil court. In addition, the issue is different from the issue concerning commercialized products and services – it is attributed to employment contracts and rights and benefits of employees. Additionally, the complained parties conduct an act which is to assist its employees in related litigations and such an act also falls under their work conditions. Therefore, it is still difficult to find that the complained parties in violation of Article 24 of the FTL.

Summarized by Chen, Haw-Kae; Supervised by Liou, Chi-Jung

## **Fuhwa Commercial Bank Co. Ltd.**

812th Commissioners' Meeting (2007)

Case: Fuhwa Commercial Bank Co. Ltd. violated Article 24 of the Fair Trade Law by not providing two types of housing loan schemes, “discharge at any time” and “restrict the period of discharge,” for the borrower’s choices without restraints at the time of the conclusion of the agreement

Key Words: commercial bank, interest rate, housing loan

Reference: Fair Trade Commission Decision of May 31, 2007 (the 812th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096103

Industry: Banks (6412)

Relevant Laws: Article 24 of the Fair Trade Law

### Summary:

1. Fuhwa Commercial Bank Co. Ltd. (hereinafter referred to as “Fuhwa Bank”) was a bank which handled residential loans. In the process of handling the loans, it

did not provide the conditions, “discharge at any time,” for the borrower’s choices without restraints; additionally, the provision on advance the date of discharge for contract violation under the agreement was not the special clause for the purpose of individual negotiation and the bank had not sought for the borrower’s agreement on such a term. Fuhwa Bank violated the provisions of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: Fuhwa Bank claimed to provide the more favourable credit conditions under the circumstance of the lock-out period for the borrower; and if the borrower does not accept the conditions provided by Fuhwa Bank, he can rather give up the loan or choose to go to other banks. Although there was no phrase, “discharge at any time,” presented in the agreement and the borrower could choose a scheme without restraints indeed, Fuhwa Bank admitted that it did not provide the conditions for the scheme, “discharge at any time,” in writing – it only orally explained them to the borrower. In addition, it could not bring up the evidence that it surely provided the conditions for the schemes “discharge at any time” and “restrict the period of discharge” in writing for the borrower’s choices without restraints at the time of the conclusion of the agreement. As a result, the FTC found that Fuhwa Bank indeed did not provide the abovementioned schemes for the borrower’s choices without restraints and in violation of Article 24 of the FTL.

3. After taking into account the factors, the motive, objective of the unlawful acts of Fuhwa Bank, the degree of the unlawful act’s harm to trading order, the duration of the actions, scale of business, operation condition, types and number of and intervals between past violations, remorse shown for the act and attitude of cooperation in the investigation, the FTC ordered Fuhwa Bank to immediately cease the aforesaid unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT\$) 400,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:

Fuhwa Commercial Bank Co. Ltd.'s Uniform Invoice Number: 86517315

Summarized by Tsao, Hui-Wen; Supervised by Chen, Yuhn-Shan

## **Gsharp Corporation Taiwan Branch**

813th Commissioners' Meeting (2007)

Case: Gsharp Corporation Taiwan Branch violated Article 24 of the Fair Trade Law by publishing comparison advertisements to sell repellent products

Key Words: repellent, comparison advertisement

Reference: Fair Trade Commission Decision of June 7, 2007 (the 813th Commissioners' Meeting); Disposition (96) Kung Ch'u Tzu No. 096110

Industry: Wholesale of Cleaning Preparations (4567)

Relevant Laws: Article 24 of the Fair Trade Law

### Summary:

1. This case originated from a complaint letter filed by Ping Heng International Co. Ltd. (hereinafter referred to as "Ping Heng") stating that: Gsharp Corporation Taiwan Branch (hereinafter referred to as "Gsharp") presented untrue pictures in the comparison advertisement published in the print media; such an act gave Gsharp's consumers an impression that the effect of applying the Burt's Bees Herbal Insect Repellent was extremely greasy. Gsharp in violation of Article 24 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: The pictures presented in the advertisement concerned were to contrast the application effect of the Off Insect Repellent Cream and the application effect of the B repellent; on top of the Off Insect Repellent Cream, the oil clean sheet in the picture of a hand was fresh and not greasy, but on top of the B repellent, the oil clean sheet in the picture of a hand was very greasy, and the arm and fingers were shining and greasy. Although Gsharp argued that the pictures which presented the degree of grease were taken after applying the two products with the same dose and indicator, and smearing the products over the objects in the same way, the advertising company stated that the picture of a hand of the B repellent was produced by firstly photographing the whole arm and hand after smearing the B repellent. Then the greasy feel in the photo was imitated to the picture

in the advertisement, resulting the shine and grease on the whole arm and hand. Therefore, the FTC found that the B repellent was applied to the whole arm and hand and the Off Insect Repellent Cream was only applied to the part of the hand where the oil clean sheet was used. These two facts formed the representations in the advertisement. Additionally, Gsharp added red and swollen marks by repair in the picture on top of the B repellent to show that the marks were a result of mosquito bites.

3. Grounds for Disposition:

(1) As in the market, the Burt's Bees Herbal Insect Repellent was the only brand whose word started with B, and the appearance of the B repellent was almost an imitated image of the appearance of the Burt's Bees Herbal Insect Repellent, the said advertisement clearly showed that the brands were compared. Additionally, in accordance with the findings of FTC after investigation, directions for use of the Burt's Bees Herbal Insect Repellent were largely different from those of the Off Insect Repellent Cream; and the consumers who observed the representations of the advertisement did not know that the two products were not applied with the same dose. These parts of the representations in the advertisement were deemed to be untrue. Additionally, after the consumers observed the overall advertisement, they were misled that the Burt's Bees Herbal Insect Repellent was much greasier than the product concerned after the application of the two products. Gsharp, furthermore, added that red and swollen marks showing mosquito bites in the picture on top of the B repellent would mislead the consumers that the Burt's Bees Herbal Insect Repellent had no protection effect. The overall impression conveyed by the representations was that the act that Gsharp presented untrue comparison advertisement on the application effect of the Burt's Bees Herbal Insect Repellent resulted in unfairness and therefore, Gsharp in violation of Article 24 of the FTL.

(2) After taking into account each circumstance, the motive of the unlawful act of Gsharp, the degree of the unlawful act's harm to trading order, the duration of the actions, the benefits derived on account of the unlawful act, scale of business and remorse shown for the act and attitude of cooperation in the investigation, the FTC

ordered Gsharp to cease the aforesaid unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT\$) 600,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:

Gsharp Corporation Taiwan Branch's Uniform Invoice Number: 20831783

Summarized by Cheng, Shih-Yu; Supervised by Yeh, Tien-Fu

## **Deltamac (Taiwan) Co. Ltd.**

816th Commissioners' Meeting (2007)

Case: Deltamac (Taiwan) Co. Ltd. violated the Fair Trade Law by improperly holding the contracts after entered in to agreements with rental enterprises

Key Words: hiring of motion picture films, motion picture and video distribution, dominant position, obviously unfair

Reference: Fair Trade Commission Decision of June 14, 2007 (the 816th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096117

Industry: Motion Picture and Video Distribution (5913)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. This case originated from the media report stating that Deltamac (Taiwan) Co. Ltd., upon its dominant position, drafted unfair contracts and withheld the contract based on the ground that the company intended to imprint the contracts with the company seal. The company constituted a deceit or an obviously unfair act sufficient to affect trading order, therefore the Fair Trade Commission (FTC) initiated an investigation.

2. Findings of the FTC after investigation: As motion picture products, such as VCD, DVD, contain copyrighted products so they have the characteristic that they cannot be substituted; in addition, the current practice shows that distributors of motion picture products mainly acquire the sole agency rights from upstream film makers and producers; and besides trading with distribution enterprises, or their agencies, resellers, it is difficult for rental enterprises to acquire complete and sufficient resources from the sources through other legal channels. Therefore, compared to rental enterprises, distribution enterprises have exclusive and powerful economic strength and the market power of distribution enterprises and rental enterprises respectively are not equal. The evidence that Deltamac (Taiwan) Co. Ltd. distributed the types of motion picture films which were in the main stream and had higher market share and the information which was purchased by large chain stores, showed that the sales quantity of the motion picture films distributed by Deltamac (Taiwan) Co. Ltd. and the level of consumers' fondness for the motion picture films were all in the leading position, and Deltamac (Taiwan) Co. Ltd. had quite competitiveness in the distribution market.

3. Grounds for Disposition:

(1) It was found that Deltamac (Taiwan) Co. Ltd. acquired the agency right to distribute 180 films for film manufacturing companies in 2005, and operated the rental business on motion picture products; in the same way, from September to November in 2005, the business personnel of Deltamac (Taiwan) Co. Ltd. or the county/city agencies signed 2006 Deltamac Digital Alliance Contracts with hundreds of rental enterprises, to stipulate key clauses, the period of the contract, the object, scope of rights, termination of contract and guarantees. The rental enterprise was one of the contracting parties; it had the right to comprehend the content of the contract and claimed its rights in terms of the contract. However, it was found again that Deltamac (Taiwan) Co. Ltd. had withheld hundreds of contracts from the trading counterparts of the contracts, the rental enterprises until April 2006, as it based on its grounds that it intended to imprint the contracts with the company seal or parties had not agreed on the date of handing over the contracts to the rental enterprises, to veil

its intention, which was to detain most of the contracts for more than five months. Such an act affected the trading counterparts' opportunities to comprehend rights and benefits and to claim these rights, and showed that Deltamac (Taiwan) Co. Ltd. relied on its dominant position against the rental enterprises which had relative disadvantaged position. Without doubts, the act was sufficient to affect trading order.

(2) In conclusion, Deltamac (Taiwan) Co. Ltd. improperly withheld the contracts after it and the trading counterparts concluded them. This fact constituted an obviously unfair circumstance sufficient to affect trading order and Deltamac (Taiwan) Co. Ltd. violated Article 24 of the Fair Trade Law. After considering the motive, purpose and anticipated improper profits of the unlawful acts of Deltamac (Taiwan) Co. Ltd.; the degree and duration of the unlawful acts' harm to trading 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 have been corrected or warned 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 imposed an administrative fine of New Taiwan Dollars (NT\$) 800,000 on Deltamac (Taiwan) Co. Ltd in accordance with the fore part of Article 41 of the FTL.

Appendix:

Deltamac (Taiwan) Co. Ltd.'s Uniform Invoice Number: 89398566

Summarized by Tai, Mei-Chin; Supervised by Lu, Li-Na

## **Camangi Corporation**

818th Commissioners' Meeting (2007)

Case: Camangi Corporation was complained for violating the Fair Trade Law by improperly notifying or issuing warning letters to the trading counterparts of the competitor

Key Words: web call, infringement of the patent right, warning letter

Reference: Fair Trade Commission Decision of July 12, 2007 (the 818th Commissioners' Meeting)

Industry: Telephones and Cellular Phones Manufacturing (2721)

Relevant Laws: Articles 19 , 22 , 24 and 45 of the Fair Trade Law

### Summary:

1. The complainant of this case was a web-call provider, which supplied web-call software and hardware to terminal servers or dealers. The complained, Camangi Corporation, was also a web-call provider. The complained did not go through the procedures regarding patent infringements – the procedure was that the complained must seek the judgment of the court of the first instance to decide whether the patent rights at issue are infringed, submitted the materials to the professional institute to assess whether there was an infringement and confirm such an infringement, and stated clearly the content and scope of the patent rights and facts which were specific to the infringement. Unexpectedly, through publishing announcement on newspapers, notifying by telephone calls and issuing warning letters to the trading counterparts of the complainant from November to December 2006, the complained indicated that the complainant's sales or use of its web call products infringed the complained's patent rights. It requested the complainant to cease to sell and stop the use the products in case. It also indicated on its initiative that the complainant should negotiate with the complained about the matters, cooperation, authorization (on its use or sale), and purchasing of related products. It was accused that the complained affected the trade order and caused unfair competition.

2. Findings of the FTC after investigation: The complained was the patent right holder of the Intellectual Property Office No. I250771. From November to December

2006, it notified, by telephone calls, SYSAGE Technology Co., Ltd. and the Taipei City Government – both of them were suspected of being involved in selling or using the infringement patent in this case. The contents of the telephone calls were aimed at stating clearly that the web call products that were sold or used by the receivers infringed the patent rights of the complained and the complained kindly requested the receivers to cease their acts. It was further found that the announcement to the industry published by the complained in the Economic Daily News on November 30, 2006 firstly disclosed the patent rights number and patent name, followed by a statement that the internet call service procedure sold by the related internet communication enterprises in the commercial sector might be infringing the above mentioned rights; and it finally referred to as upon the public that they should identify whether the products were legally authorized by the original equipment manufacturers prior to the use of the products. A comprehensive analysis was made on the content of the whole text, and it was determined that the text did not specify the matter that certain competitors infringed the patent rights of the complained. It was finally found that the complaint email letter that was sent to the Taipei City mayor's mailbox on December 4, 2006, and the legal attest letter that was mailed to SYSAGE Technology Co., Ltd. on December 5, 2006 – both of the email and letter contained the extracted content of the aforesaid notice to the industry – were all aimed at notifying the persons who were suspected of being involved in the infringement and requesting their cessation of infringement.

3. Grounds for Disposition: In accordance with the findings of FTC after investigation, the telephone calls made, announcement and notice published and letter issued by the complained were aimed at the cessation of infringement of the patent rights caused to the complained through the receivers' acts of sales and use, they did not state clearly that other specific competitors other than the receivers did infringe the patent rights of the complained. The FTC found that the contents made in the telephone calls, announcement, notice and letter were the patent holder's notifications of cessation of infringement against the acts of the sellers and users in accordance with the patent laws and regulations. Furthermore, the complained had commissioned a thirty party to assess whether there was an infringement of patent rights before the

announcement and notice on November 30, 2006 was published and the warning letter on infringement of patent rights to SYSAGE Technology Co., Ltd. on December 5, 2006 was issued. The result of the assessment was that the website of SYSAGE Technology Co., Ltd. was substantially identical to the legal scope of the patent held by the complained. Therefore, the complained's exercise of its patent rights were proper and were in accordance with the Patent Law and in accordance with Article 45 of the Fair Trade Law (FTL). No provisions of the Fair Trade Law shall apply. It would be, as a matter of course, difficult to find the complained in violation of Articles 19(i) and (iii), 22 and 24 of the FTL.

Summarized by Yeh, Su-yen; supervised by Liou, Chi-jung

## **Hueia Yeha Enterprise Co., Ltd.**

819th Commissioners' Meeting (2007)

Case: Hueia Yeha Enterprise Co., Ltd. was complained for violating Articles 20 and 24 of the Fair Trade Law by selling foot massagers (HY-19934)

Key Words: OSIM, massager, imitate, product appearance, functional shape

Reference: Fair Trade Commission Decision of July 19, 2007 (the 819th Commissioners' Meeting) (Non-disposition)

Industry: Retail Sale of Other Household Appliance and Supplies in Specialized (4749)

Relevant Laws: Articles 20 and 24 of the Fair Trade Law

### Summary:

1. This case was originated from the complaints filed by OSIM International Ltd. and OSIM GHC (Taiwan) Co., Ltd. (hereinafter jointly referred to as "Complainants") and the complaints stated briefly as follows: The product appearances of the foot massagers (HY-19934) of Hueia Yeha Enterprise Co., Ltd. (hereinafter referred to as

“complained”) were the imitation of the product appearances of the Complainants’iSqueez foot massagers, the appearance design, colors and the combination of patterns of the complainer’s products were identical to those of the Complainants’products. The imitation resulted that the complainer’s products were mistaken for the Complainants’products and the consumers were confused about which company manufactured which product. Furthermore, the complainer’s was actively exploiting the efforts of the Complainants.

2. Findings of the FTC after investigation:

(1) It was found that the upright triangle and shape of dual tank were the main characteristics of the appearances of Complainants’iSqueez products. As the underlined function of such a product was to massage calves, ankles and feet simultaneously, in order to reach the said function, both legs of a user, from his feet to calves, all must be placed in the massager. In addition, the upright-triangular dual tank of such a product was designed on the basis of the shape of a human leg (foot) so as to enable both legs of a user, from his feet to calves, all to be placed in the massager, and hence simultaneously massage the said parts of a human leg. The upright triangle and shape of dual tank of this product possessed the functional shape; they did not manifest the origin of the product, however. In addition, the other brands of the foot massagers provided by the Complainants, such as Azumi, Sampo, Thrive and Sanyo products, were all designed in the shape of upright-triangular dual tank – therefore we can see that the shapes of such products were designed on the basis of the functional needs, and the shape was not unique to a specific brand. As for the said appearance design (the height, width and the camber of the screen of the product), colors (the colors of the screen and dual tank) and the combination of patterns (the locations of the name of the product and of the trademark), these symbols were still not specially notable after viewing such a product as a whole; and they were insufficient to make related enterprises or consumers to recognize them as the manifestation of the trademark of the product.

(2) It was further found that, since the Complainants’product appearances possessed the functional shapes, the Complainants had no right to exclude other

competitors from adopting the functional appearances of the same class in their products. In addition, other brands of foot massagers in the market also adopted similar shapes in appearance design; therefore the appearance of such a product was not competitively unique. In addition, it was found that there were no big differences between the Complainants' claimed appearance design (the height, width and the camber of the screen of the product) and the combination of patterns (the locations of the name of the product and of the trademark) and the symbols of other brands of foot massagers on the market; the main color (the silver grey of the screen, the Complainants' referred to as it silver white) of the Complainants' product was the color commonly used by other brands in such a type of products, for example, Thrive and Sanyo use similar colors in the front screens of their foot massagers (MD-6100 and TS-620AA respectively).

3. Grounds for Disposition:

(1) The Complainants' product appearances possessed functional shapes and did not manifest the origin of the products, they were not the symbols set forth in Article 20 of the Fair Trade Law (FTL), which provides that "symbols that are ... commonly known to relevant enterprises or consumers." Therefore, it was not necessary to specially inquire whether "using in the same or similar manner" the product appearance of the complained further resulted in "causing confusion with such person's goods." Therefore, based on the existing evidence, it would still be difficult to find that the complained had acted in violation of Article 20 of the FTL.

(2) As for the appearance design and combination of patterns of the Complainants' products, these symbols were also similar to those of other brands of foot massagers on the market and the Complainants also color their front screens in silver grey which were commonly used in such a type of the products. After the FTC's observation of the appearance design of the Complainants' products as a whole, the said design did not show the fact that the complained actively imitated the products of the Complainants. In addition, the trademark on the complainer's products was different from that on the Complainants' products and this difference was sufficient for relevant enterprises or consumers to distinguish different products. In conclusion, it would be

difficult to find that the complainant had involved in imitating the product appearances of the Complainants' products and being actively exploiting their efforts, in violation of Article 24 of the FTL.

Summarized by Fong, Jyun-cyuan; supervised by Shen, Li-yu

## **Uni-President Enterprises Corporation, Wei Chuan Foods Corporation, and Kuang Chuan Dairy Co., Ltd.**

825th Commissioners' Meeting (2007)

Case: Uni-President Enterprises Corporation, Wei Chuan Corp., and Kuang Chuan Dairy Co., Ltd. violated the Fair Trade Law by simultaneously raising sales prices of fresh milk

Key Words: fresh milk, can prevent but does not, simultaneously raise the prices

Reference: Fair Trade Commission Decision of August 30, 2007 (the 825th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096140, 096141 and 096142

Industry: Dairy Products Manufacturing (0850)

Relevant Laws: Article 24 and 41 of the Fair Trade Law

### Summary:

1. This case was originated from newspaper articles published in July 2007 which stated that three large domestic companies of milk products, Uni-President Enterprises Corporation (hereinafter referred to as "Uni-President"), Wei Chuan Corp. (hereinafter referred to as "Wei Chuan") and Kuang Chuan Dairy Co., Ltd. (hereinafter referred to as "Kuang Chuan"), would simultaneously raise sales prices of their fresh milk on August 1, 2007. In order to find out whether the said enterprises involved in jointly raising the prices, manipulating the prices, price-pushing or other matters which were in violation of law, the Fair Trade Commission (FTC) therefore

set up a case file and conducted an *ex officio* investigation.

2. Findings of the FTC after investigation: Currently, the three largest domestic companies of milk products in the fresh milk market are Uni-President, Wei Chuan and Kuang Chuan and the market share of the three enterprises in total is close to 80%. After the “Appraisal Committee for the Sales Price of Milk, National Animal Industry Foundation” (hereinafter referred to as “Appraisal Committee for the Sales Price of Milk”) resolved that the purchase prices of milk were raised by New Taiwan dollars (NT\$) 3 per liter at the meeting on May 23, 2007, the three largest companies believed that the raise of purchase prices of milk resulted in the increase of their purchase costs of milk. Therefore, they simultaneously raised sales prices of fresh milk on August 1 and had notified the down-stream trading counterparts with letters.

3. Grounds for Disposition:

(1) After conducting a comprehensive analysis on Article 10 of the Administrative Punishment Law, Articles 1 and 24 of the Fair Trade Law (FTL), we found that the enterprises which obviously have the dominant position and have been adequately informed of the Commission's stance on the enforcement of law are obliged, under the FTL, to prevent from engaging in “the obviously unfair act sufficient to affect market order.” If the enterprises can prevent the raise of sales prices for maintaining competition order and public interests but they do not take any preventive measures, their acts are not different from those are actively in violation of law.

(2) The market share of the three largest enterprises in this case is close to 80% in total and the enterprises possess considerable market power. Furthermore, since 2000, the FTC has held meetings regularly each year to explicitly declare its stance on enforcement of laws as to prohibiting the three largest milk enterprises from simultaneously raise their prices of fresh milk even due to the raise of purchase prices of milk; and to repeatedly urge them to consider their respective operational cost, individual conditions, as well as different channels or promotion schemes to reflect their final sales prices based upon their respective operation plans. Later, the officials in the meeting of the Appraisal Committee for the Sales Price of Milk on May 23,

2007 announced the aforesaid policy on enforcement of law again and thus apparently the companies had been adequately informed of the FTC's stance on enforcement of law. As the three largest companies' "acts of the raise of price" were dangerous, they should be obliged "to prevent the obviously unfair act sufficient to affect market order."

(3) All the three companies in this case are the committee members of the Appraisal Committee for the Sales Price of Milk. They could not only directly take part in stipulating the procedure regarding the purchase price of milk, they could also control the time and procedure of the announcement and implementation of the purchase reference price of milk. In addition, because they and those enterprises in the same line of the three companies had simultaneously raised sales prices of fresh milk since April 1, 1999, the Commission has held meetings each year to declare to supervise the situation. Since then there have been no acts similar to the act of simultaneously raising sales prices of fresh milk. The latter fact is sufficient to prove that it is possible for the enterprises to prevent the aforesaid August 1 simultaneously raising the prices from happening. However, each of the three largest companies did not take their respective operational conditions into account and reflect them on the sales price. Also, it was obvious that they could prevent the unlawful facts from happening but they did not take any preventive measures.

(4) The three largest milk companies in this case had the dominant positions on the market and had been adequately informed of the Commission's stance on enforcement of law. As consumers were in general feeling disturbed at that point of time, the companies were obliged to prevent unlawful facts from happening, but they did not choose to do so. The incident that the companies raised the prices of fresh milk simultaneously on August 1 was sufficient to affect the trade order of the fresh milk market; what the enterprises had done was to be reproached in terms of the commercial ethics and constituted the obviously unfair acts which harmed public interests. The enterprises did violate Article 24 of the FTL. After the FTC considered the relevant factors, the market shares of and anticipated improper profits of the unlawful acts of the enterprises, as well as the degree of the illegal act's harm to trade order, it ordered the enterprises to cease the aforesaid acts immediately and

Uni-President, Wei Chuan and Kuang Chuan were imposed with administrative fines of New Taiwan Dollars (NT\$) 4,500,000, NT\$3,500,000 and NT\$3,500,000 respectively in accordance with the fore part of Article 41 of the FTL.

Appendix:

Uni-President Enterprises Corporation's Uniform Invoice Number: 73251209

Wei Chuan Foods Corporation's Uniform Invoice Number: 11347802

Kuang Chuan Dairy Co., Ltd.'s Uniform Invoice Number: 04313172

Summarized by Chiang, Hui-yi; supervised by Wu, Pi-ju

## **Chinfon Commercial Bank Co. Ltd.**

826th Commissioners' Meeting (2007)

Case: Chinfon Commercial Bank Co. Ltd. violated the Fair Trade Law by requiring the borrower to conform to the equivocal general clause of law

Key Words: interest rate, housing loan, general clause of law, standard contract

Reference: Fair Trade Commission Decision of September 6, 2007 (the 826th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 096143

Industry: Banks (6412)

Relevant Laws: Articles 24 and 41 of the Fair Trade Law

Summary:

1. This case was originated from the fact that Chinfon Commercial Bank Co. Ltd. (hereinafter referred to as "Chinfon") was complained for stipulating many items in the contractual documents which were to be concluded at the time of applying and handling the said documents relating to corporate loan and these items were in

violation of the provisions of the Fair Trade Law (FTL). The Fair Trade Commission (FTC), during its 663rd Commissioners' Meeting on July 22, 2004, resolved that Chinfon refused to provide the written agreement documents to the trading counterpart and required him to conform to the equivocal general clause of law provided in the standard contract, when Chinfon and the complainant concluded the loan contract. Chinfon's act constituted in violation of Article 24 of the FTL and it was on the record that Chinfon was imposed with an administrative fine of New Taiwan Dollars (NT\$) 400,000. Furthermore, as Chinfon was dissatisfied with the aforesaid penalty, it filed a petition to the Executive Yuan. The petition was however dismissed. It continued to file an administrative action in the Taipei Supreme Administrative Court. As the court found that the Commission could not provide concrete evidence to prove the detrimental fact that Chinfon refused to provide the agreement for the trading counterpart, it would be difficult to believe that there were reasons that the findings in the original Disposition corresponded to the fact. Therefore, the court held that, "the decision of the petition and the original Disposition are all revoked." Accordingly, the FTC was directed to handle this case based upon the appropriate law.

2. With regard to the part that Chinfon had refused to provide the written agreement to the complainant at the time of concluding the contract, the findings of FTC after investigation showed that both parties stuck to their arguments and the complainant could not provide enough evidence to support his claim that Chinfon did refuse to provide the contract at the time of concluding it. Based upon the existing evidence, it would be difficult to find that Chinfon did refuse to provide the written agreement documents to the borrower and hence in violation of the provisions of the FTL.

3. Furthermore, with respect to the part that Chinfon required the borrower to conform to the equivocal general clause of law during the contractual period, it was found that Chinfon stipulated Clause 3 under "3. Miscellaneous Clauses" in the "Short-term Credit Agreement" – Clause 3 provides that "each operation, responsibility and obligation related to crediting under the provisions of this Agreement, the parties shall not only conform to this Agreement or special terms stipulated in another concluded agreement, but they shall also conform to the 'Uniform Customs and Practice for Documentary Credit,' 'Uniform Rules for

Collections,’ ‘Foreign Exchange Control Act’ and the current regulations of and regulations which will be stipulated by the Bankers Association of the Republic of China ...” and Chinfon admitted the existence of such a clause. Although Chinfon claimed that “the regulations of the Bankers Association of the Republic of China were stipulated in accordance with related laws and administrative rules; the rights and obligations provided by the regulations do not affect the rights and benefits of the parties,” the probability of various interpretations of the equivocal general clause of law does exist so that the obligations the trading counterpart bear were very uncertain and the content of the clause was in fact the unilateral constraint imposed on the borrower by the financial enterprise. After considering the principle of good faith, it is apparent that the implementation of the clause would be obviously unfair. In addition, for financial enterprises and general consumers, the information contained in the regulation stipulated by the Bankers Association of the Republic of China is asymmetric. According to the abovementioned, it was found that Chinfon improperly required the borrower to conform to the equivocal general clause of law in the standard contract and improperly pressured the trading counterpart on the basis of its relative dominant position. Chinfon’s act was hence obviously unfair and sufficient to affect the trade order, and such an act fell under the act set forth in Article 24 of the FTL.

4. After taking into account the factors, the motive and purpose of the unlawful acts of Chinfon, the degree of its unlawful acts’ harm to the trading order, the duration of its acts, scale of business, operation condition, types and number of and intervals between past violations, remorse shown for the act and attitude of cooperation in the investigation, the FTC ordered Chinfon to immediately cease the aforesaid unlawful acts and imposed an administrative fine of NT\$200,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:

Chinfon Commercial Bank Co. Ltd.’s Uniform Invoice Number: 03373221

Summarized by Tsao, Hui-wen; supervised by Chen, Yuhn-shan

## **Appendix I**

# **THE FAIR TRADE LAW OF 1992**

*Promulgated on February 4, 1991*

## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 1**

This Law is enacted to maintain order in transactions, to protect the interest of consumers, to ensure fair competition, and to promote the stability and prosperity of the national economy. For matters not provided in this Law, the relevant provisions of other laws shall govern.

### **Article 2**

The term “enterprise” as used herein refers to:

1. a company;
2. an industrial or commercial firm owned by a sole owner or in the form of a partnership;
3. a trade association; or
4. any other persons or organizations engaged in transactions by providing goods or services.

### **Article 3**

The term “trading counterpart” as used herein refers to a person who engages in or concludes transactions with an enterprise as its supplier or purchaser.

### **Article 4**

The term “competition” as used herein refers to the acts whereby two or more

enterprises offer in the market more favorable price, quantity, quality, service or other terms in order to secure trading opportunities.

## **Article 5**

The term “monopoly” as used herein refers to a condition wherein an enterprise faces no competition or has an overwhelming position to enable it to exclude other competitors in a particular market.

When two or more enterprises do not in fact compete with each other in pricing and their relations as a whole with other entities are such as specified in the preceding paragraph, such situation shall be deemed a monopoly.

The term “particular market” as used in the first paragraph of this Article refers to a geographic area or a sector wherein enterprises engage in competition in respect of a particular commodity or service.

## **Article 6**

The term “combination” as used herein refers to any of the following circumstances where under an enterprise:

1. merges with another enterprise;
2. holds or acquires the shares or capital contributions of another enterprise to an extent of representing more than one-third of the total voting shares or the total capital stock of such other enterprise;
3. accepts a transfer of, or leases the whole or the major part of the business or properties of another enterprise;
4. frequently operates jointly with another enterprise or is entrusted by another enterprise to operate the latter’s business; or
5. directly or indirectly controls the business operation, or the employment and termination of the personnel, of another enterprise.

In computing the shares or capital contributions referred to in Item 2 of the preceding paragraph, the shares or capital contributions held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the subject enterprise shall be included.

## **Article 7**

The term “concerted action” as used herein refers to an act to mutually restrict the activities of enterprises, such as an act by an enterprise that enters into a contract, agreement or other form of mutual understanding with other enterprises with whom it competes to jointly determine the prices of goods or services, or to restrict quantities, technology, products, equipment, trading counterparts or trading territories.

## **Article 8**

The term “multi-level sales” as used herein refers to a sales or marketing plan or organization in which a participant pays certain consideration in exchange for acquiring the right to sell or promote the sale of goods or services and the right to introduce other persons to join the plan or organization, and therefore obtains a commission, monetary award, or other economic benefits.

The phrase “to pay a certain consideration” refers to the payment of money, the purchase of goods, the provision of services or the assumption of indebtedness.

## **Article 9**

The term “competent authority” as used herein refers to the Fair Trade Commission of the Executive Yuan where the central government is concerned, the Department of Reconstruction of a city or province where a municipality or province is concerned, and the city or county government where a city or county is concerned.

Those matters provided in this Law that fall within the jurisdiction of other ministries and agencies shall be entertained by the Fair Trade Commission in conjunction with such other ministries and agencies.

## **CHAPTER TWO MONOPOLIES, COMBINATIONS AND CONCERTED ACTIONS**

### **Article 10**

A monopolistic enterprise shall not engage in any of the following acts:

1. using unfair methods directly or indirectly to prevent other enterprises from taking part in competition;
2. improperly determining, maintaining or changing the prices of goods or the remuneration for services;
3. without proper reason, causing a trading counterpart to provide preferential treatment; or
4. conducting other acts by abusing its market standing.

The names of monopolistic enterprises shall be periodically announced to the public by the central competent authority.

### **Article 11**

If any of the following circumstances shall exist in respect of a combination of enterprises, an application for the approval thereof shall be filed with the central competent authority:

1. As a result of the combination, the surviving enterprise will acquire a market share reaching one third (1/3);
2. An enterprise participating in the combination holds a market share reaching one fourth (1/4); or
3. The amount of sales in the preceding fiscal year of an enterprise participating in the combination exceeds the amount publicly announced by the central competent authority.

The names of enterprises holding a market share reaching one fifth (1/5) shall be periodically announced to the public by the central competent authority.

The central competent authority shall make its decision on approval or disapproval within two months after receipt of an application referred to in paragraph

1 of this Article.

## **Article 12**

The central competent authority may approve the application referred to in the preceding Article if the benefit of the combination to the overall economy outweighs the disadvantages of its restraining competition.

## **Article 13**

Where an enterprise enters into a combination without filing an application for approval as required hereunder or after the disapproval of its application, the central competent authority may prohibit such combination, or by an order specify a time limit by which the said enterprise shall divide itself into separate enterprises, dispose of its shares in whole or in part, transfer a part of its business to others, order resignation from positions held, or adopt other necessary dispositions.

The central competent authority may order the dissolution, suspension of business, or the cessation of the business of an enterprise if it violates the disposition made by the central competent authority pursuant to the preceding paragraph.

## **Article 14**

Enterprises may not engage in concerted actions, unless the concerted action satisfies any of the following circumstances, is beneficial to the national economy as a whole and to the public interests, and has been approved by the central competent authority:

1. to unify the specifications or models of goods in order to reduce cost, improve quality or increase efficiency;
2. to jointly research and develop goods or markets in order to upgrade technical skills, improve quality, reduce costs or increase efficiency;
3. to engage in specialized areas of business in order to achieve the enterprise's rational operation;
4. to enter into an agreement in respect of the competition in overseas markets in order to secure or promote exports;

5. to take concerted action in respect of the importation of foreign goods in order to strengthen trading capability;
6. to take concerted action in imposing limitations restrictions on the quantity of production and sales, equipment or prices in order to adjust to orderly demand when the enterprises in a particular industrial sector suffer hardship to continue their business operations or over-production due to the fact that the market price of goods remains at a level below the average production cost during economic recession; or
7. to take concerted action in order to improve the operational efficiency or strengthen the competitiveness of the small and medium-sized enterprise concerned.

## **Article 15**

In granting its approval pursuant to the preceding Article, the central competent authority may impose conditions, restrictions or encumbrances.

The approval shall be valid for a limited period not exceeding three (3) years. The enterprises involved may, with proper reasons, file a written application for an extension thereof with the central competent authority within three (3) months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed three (3) years.

## **Article 16**

In the event that after the approval of a concerted action, the cause for such approval is extinguished, or the economic condition has changed, or the conduct of the enterprises involved exceeds the scope of the approval, the central competent authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease or rectify such conduct.

## **Article 17**

The central competent authority shall maintain a specific registry to record the approvals, conditions, restrictions undertakings, time limit and relevant dispositions

referred to in the preceding three Articles and shall publish these matters in the government gazette.

## **CHAPTER THREE UNFAIR COMPETITION**

### **Article 18**

An enterprise which supplies goods to its trading counterpart shall allow its trading counterpart to freely decide the prices at which such goods will be resold to a third party by the trading counterpart or at which such goods will be resold by the said third party. Any agreement contrary to this provision shall be null and void except for daily products to be used by general consumers, which are subject to free competition with similar kinds of goods available in the market.

The items of daily products referred to in the preceding paragraph shall be publicly announced by the central competent authority.

### **Article 19**

An enterprise shall not commit any of the following acts which is likely to impede fair competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise with the intent to cause harm to such particular enterprise;
2. treating another enterprise discriminatively without due cause;
3. causing, by coercion, inducement with profit, or other improper means, the trading counterpart(s) of its competitors to transact business with itself;
4. causing, by coercion, inducement with profit; or other improper means, another enterprise to refrain from competing in price, or to take part in a combination or a concerted action;

5. acquiring, by coercion, inducement with profit, or other improper means, the secret of production and sales, information concerning trading counterparts or other relevant technical secret of any other enterprise; or
6. imposing improper restrictions on its trading counterparts' business activities as a condition of transacting business with them.

## **Article 20**

An enterprise shall not commit any of the following acts with respect to the goods or services provided by its business operation:

1. use in an identical or similar manner of the name of another person, the name of a business establishment, a corporate name, trademark, product container packaging, external appearance or other symbol signifying the goods of another persons that are commonly known to the relevant public, if such use causes confusion with goods of any other person, or sale, transport, export or import of goods using such symbols;
2. use in an identical or similar manner of the name of any other person, the name of a business establishment, a corporate name or other symbols signifying the business or service of another person that are commonly known to the relevant public, if such use causes confusion with the facilities or activities of the business or service of any other person; or
3. use an identical or similar goods trademark which is identical or similar to a well-known foreign trademark not registered in this country, or the sale, transport, export or import of goods bearing such trademark.

The provisions of the preceding paragraph are not applicable to the following situations:

1. use in an ordinary manner of the generic name customarily associated with the goods themselves or of a symbol customarily used in the trading of goods of the same category, or the sale, transport, export or import of the goods bearing the said name or symbol;
2. use in an ordinary manner of a name or other symbols customarily used in trading for similar business or services;

3. use of one's own name in good faith or the sale, transport, export or import of goods bearing the said name; or
4. use in good faith of a symbol identical or similar to the symbol referred to in Items 1 and 2 of the preceding paragraph, before such symbol becomes known to the relevant public, or use of the said symbol in conjunction with the transfer of business from a person who uses the same in good faith, or the sale, transport, export or import of goods bearing such symbol.

Where the business, goods, facilities or activities of an enterprise is(are) likely to suffer damage or confusion as a result of the act(s) of another enterprise as set forth in Items 3 and/or 4 of the preceding paragraph, the said enterprise may request such other enterprise to affix an appropriate symbol, unless the other enterprise acts only as a carrier of such goods.

## **Article 21**

An enterprise shall not make, on goods or in advertisements relating thereto, any false, untrue or misleading presentation which may likely cause confusion to or mistake by consumers such as their price, quantity, quality, content, manufacturing process, date of manufacturing, validity period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, and place of processing.

An enterprise shall not sell, transport, export or import goods bearing false, untrue or misleading presentations referred to in the preceding paragraph.

The provisions of the two preceding paragraphs shall apply *mutatis mutandis* to the provision of services by an enterprise.

An advertising agent which, having the knowledge of or being able to know the fact, makes or designs a misleading advertisement shall be liable, jointly and severally with the principal of such advertisement, for the damages arising therefrom. An advertising medium, which has the knowledge of or is able to know the fact that the advertisement it may communicate or publish is likely to mislead the public but still communicates or publishes such advertisement, shall be liable, jointly and severally with the principal of the advertisement, for the damages arising therefrom.

## **Article 22**

An enterprise shall not, for the purpose of competition, make or publicize any false statements which is likely to cause damage to another person's business reputation.

## **Article 23**

Multi-level sales shall not be conducted if the participants thereof receive commissions, monetary awards, or other economic benefit mainly from introducing others to join in the sales rather than from the marketing or sale of the goods or services at reasonable market prices.

Regulations for the control of multi-level sales shall be enacted by the central competent authority.

## **Article 24**

In addition to what has been provided for in this Law, an enterprise shall not conduct other deceptive or obviously unfair acts that are sufficient to affect trading order.

# **CHAPTER FOUR FAIR TRADE COMMISSION**

## **Article 25**

In order to administer matters in respect of fair trade as set forth in this Law, the Executive Yuan shall establish the Fair Trade Commission having the following functions:

1. to prepare and formulate policies and rules related to fair trade;
2. to examine and review any fair trade matters related to this Law;
3. to investigate the activities of enterprises and the economic conditions;
4. to investigate and to dispose any case violating this Law, and
5. to administer other matters related to fair trade.

## **Article 26**

The Fair Trade Commission may investigate and handle, ex officio or upon complaints, any violations of the provisions of this Law that are detrimental to public interests.

## **Article 27**

When conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:

1. to notify the principal parties and interested persons to appear and to make statements;
2. to notify relevant organizations, groups, enterprises, or individuals to submit their account books, documents, and other necessary information or evidence, and
3. to send personnel to the office, place of business, or other locations of the relevant groups or enterprises to conduct necessary investigations.

In carrying out his duty under this Law, the investigator shall present documents evidencing his authority to carry out such duty; upon failure by the investigator to show such documents, the person to be investigated may refuse the investigation.

## **Article 28**

The Fair Trade Commission shall function independently according to law, and dispositions by the Fair Trade Commission in respect of any fair trade cases may be executed in the name of the Commission.

## **Article 29**

The organizational structure of the Fair Trade Commission shall be governed by a separate law.

## **CHAPTER FIVE DAMAGES**

### **Article 30**

If an enterprise violates any provision of this Law and infringes upon another person's rights or interests, the injured party may petition to eliminate such infringement. If there is a likelihood of infringement, the party may petition for prevention thereof.

### **Article 31**

An enterprise which infringes upon the rights and interests of another person as a result of its violation of this Law shall be liable for the damages arising therefrom.

### **Article 32**

In the case of intentional act, a court may, at the request of the injured party referred to in the preceding Article and based on the extent of infringement, award a compensation greater than the amount of damages actually incurred; provided, however, that the amount so awarded may not exceed three times of the amount of proven damages.

In case the infringing party gains any profits from his act of infringement, the injured party may request to have the amount of damages calculated based exclusively on such profits.

### **Article 33**

The right to claim for damages as specified in this CHAPTER shall be extinguished if not exercised within two years from the time when the claimant has knowledge of the act and the person liable for the damages, or within ten years from the commitment of such act.

### **Article 34**

When an injured party institutes a lawsuit in accordance with this Law, he may request for publishing the contents of the judgment in newspapers at the infringing party's expense.

## **CHAPTER SIX PENALTIES**

### **Article 35**

Any violator of the provisions of Articles 10, 14, 20, or paragraph 1 of Article 23 shall be punished by imprisonment for not more than three (3) years, detention, or in lieu thereof or in addition thereto a fine of not more than one million New Taiwan Dollars (NT\$1,000,000).

### **Article 36**

Any violator of the provisions of Article 19 who continues his violation after having been ordered by the central competent authority to cease and desist shall be punished by imprisonment for not more than two (2) years, detention, or in lieu thereof or in addition thereto, a fine of not more than five hundred thousand New Taiwan Dollars (NT\$500,000).

### **Article 37**

In the event of any violation of Article 22, the person committing the acts shall be punished by imprisonment for not more than one (1) year, detention, or in lieu thereof or in addition thereto, a fine of not more than five hundred thousand New Taiwan Dollars (NT\$500,000).

### **Article 38**

In the event that the violator referred to in any of the three preceding Articles is a legal person, in addition to the punishment to be imposed upon the person committing the act, the said legal person shall also be subject to the fine specified in the

respective Article.

### **Article 39**

Where more severe punishment is provided in other laws in respect of the offenses referred to in the four preceding Articles, the more severe punishment shall apply.

### **Article 40**

Where an enterprise fails to apply for an authorization for entering into a combination or where it does apply for, but is not permitted to enter into a combination and nevertheless enters into such combination, the enterprise shall be punished, in addition to the disposition under the provisions of Article 13 hereof, by a fine of not more than one million (1,000,000) but not less than one hundred thousand (100,000) New Taiwan Dollars.

### **Article 41**

Where an enterprise violates the provisions of this Law, the Fair Trade Commission may order the said enterprise to discontinue its act or set a time limit for it to take corrective action. In the event the enterprise fails to discontinue its act or to take corrective action within the given time limit after having been ordered to do so, the Fair Trade Commission may continue to give order and, in addition thereto, the said enterprise shall be punished successively by a fine of not exceeding one million New Taiwan Dollars (NT\$1, 000, 000) until its violating act is discontinued or corrected.

### **Article 42**

Violators of the governing regulations to be prescribed by the central competent authority under paragraph 2 of Article 23 shall be punished by a fine of not more than five hundred thousand (500, 000) but not less than fifty thousand (50, 000) New Taiwan Dollars. In case of a serious violation, an order may be issued to dissolve, suspend or close down the business operation of the violators.

### **Article 43**

In the course of an investigation made by the Fair Trade Commission under the provisions of Article 27, if the party to be investigated refuses, without due cause, to accept the investigation, to appear at the hearing to make statements, or to submit relevant account books, documents or evidence within a given time limit, the said party shall be subject to a fine of not more than two hundred fifty thousand (250,000) but not less than twenty thousand (20,000) New Taiwan Dollars. If the said party, after having been notified, continues to refuse without due cause, the Fair Trade Commission may continue to issue notices of investigation and impose with respect to each successive refusal a fine of not more than five hundred thousand (500,000) but not less than fifty thousand (50,000) New Taiwan Dollars consecutively until its acceptance of the investigation, appearance to make statements, or submission of relevant account books, documents or evidence.

### **Article 44**

Any failure to pay the fine imposed under the four preceding Articles shall cause the case to be referred to a court for compulsory execution.

## **CHAPTER SEVEN SUPPLEMENTARY PROVISIONS**

### **Article 45**

The provisions of this Law shall not apply to the proper exercise of the right(s) under the Copyright Law, Trademark Law or Patent Law.

### **Article 46**

The provisions of this Law shall not apply to any act performed by an enterprise in accordance with other laws.

The acts of a governmental enterprise, public utility or communications and transportation enterprise approved by the Executive Yuan shall not be subject to the

application of this Law until the elapse of five years after the promulgation of this Law.

### **Article 47**

Unrecognized foreign legal persons or groups may file a complaint, private prosecution or civil action in respect of the matters specified in this Law provided, however, that nationals or groups of the Republic of China are entitled to the same privileges in their countries under treaties, laws and regulations or customary practices of such countries, or mutual protection agreement(s) entered into by and between groups or organizations with the approval of the central competent authority.

### **Article 48**

The enforcement rules of this Law shall be adopted by the central competent authority.

### **Article 49**

This Law shall come into force one year after promulgation.

## **Appendix II**

# **THE FAIR TRADE LAW OF 1999**

*Promulgated on February 4, 1991, Effective on February 4, 1992;  
Amendments Promulgated on February 3, 1999, Effective on February 5, 1999  
(The 1999 Amendments amended Articles 10, 11, 16, 18, 19, 20, 21, 23, 35, 36, 37 and  
40, 41, 42, 46, 49, and added Articles 23-1, 23-2, 23-3, and 23-4.)*

## **CHAPTER ONE GENERAL PRINCIPLES**

### **Article 1**

This Law is enacted for the purposes of maintaining trading order, protecting consumers' interests, ensuring fair competition, and promoting economic stability and prosperity. Unless otherwise provided for in this Law the provisions of other relevant laws shall apply.

### **Article 2**

The term "enterprise" as used in this Law shall include,

1. a company,
2. a sole proprietorship or partnership,
3. a trade association, and
4. any other person or organization engaging in transactions through the provision of goods or services.

### **Article 3**

The term "trading counterpart" as used in this Law means any supplier or purchaser that engages in or concludes transactions with an enterprise.

## **Article 4**

The term “competition” as used in this Law means any conduct of one enterprise to contest trading opportunities in the same market with one or more enterprises through offering more favorable price, quantity, quality, service or any other terms.

## **Article 5**

The term “monopolistic enterprise” as used in this Law means any enterprise that faces no competition or has a dominant position to enable it to exclude competition in a relevant market.

Two or more enterprises shall be deemed monopolistic enterprises if they do not in fact, engage in price competition with each other and they as a whole has the same status as the enterprise defined in the provisions of the preceding paragraph.

The term “relevant market” as used in the first paragraph means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services.

## **Article 6**

The term “merger” as used in this Law means a situation:

1. where an enterprise and another enterprise are merged into one;
2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise;
3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter’s business; or
5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the

acquiring enterprise under subparagraph 2 shall be included.

### **Article 7**

The term “concerted action” as used in this Law means the conduct of any enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods and services, etc., and thereby to restrict each other’s business activities.

### **Article 8**

The term “multi-level sales” as used in this Law means the promotion or sales plan or organization pursuant to which the participants pay a certain consideration to obtain the right to promote or sell goods or services and the right to introduce other persons to participate in the plan or organization, thereby receiving a commission, bonus, or other economic benefit.

“To pay a certain consideration” as used in the preceding paragraph means the payment of money, the purchase of goods, the provision of services or the undertaking of an obligation.

### **Article 9**

The term “competent authority” as used in this Law means the Fair Trade Commission, Executive Yuan, at the central government level; the Department of Reconstruction at the municipal level; and the county (or city) government at the county (or city) level.

For any matter provided for in this Law that concerns the authorities of any other ministry or commission, the Fair Trade Commission, Executive Yuan, may consult with such other ministry or commission to deal therewith.

## **CHAPTER TWO**

### **MONOPOLIES, MERGERS AND CONCERTED ACTIONS**

#### **Article 10**

No monopolistic enterprises shall:

1. directly or indirectly prevent any other enterprises from competing by unfair means;
2. improperly set, maintain or change the price for goods or the remuneration for services;
3. make a trading counterpart give preferential treatment without justification; or
4. otherwise abuse its market power.

#### **Article 11**

For any merger that falls within any of the following circumstances, an application for approval shall be filed with the central competent authority:

1. as a result of the merger the enterprise(s) will have one third of the market share;
2. one of the enterprises in the merger has one fourth of the market share; or
3. sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the central competent authority.

The central competent authority shall make a decision of approval or rejection within two months from the receipt of an application filed in accordance with the preceding paragraph.

#### **Article 12**

The central competent authority may approve an application for merger filed pursuant to the preceding Article if the overall economic benefit of the merger outweighs the disadvantages resulting from competition restraint.

### **Article 13**

Where any enterprise(s) fail to file an application for any merger that is required for approval, or proceed with the merger despite that the application is not approved, the central competent authority may prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from positions, or make any other necessary dispositions.

For enterprise(s) violating the disposition made by the central competent authority pursuant to the preceding paragraph, the central competent authority may order the dissolution of such enterprise(s), or the suspension or termination of their operations.

### **Article 14**

No enterprise shall have any concerted action, unless the concerted action that meets the requirements under one of the following circumstances is beneficial to the economy as a whole and in the public interest, and the central competent authority has approved such concerted action:

1. unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;
2. joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
3. each developing a separate and specialized area for the purpose of rationalizing operations;
4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade;
6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, while in economic downturn, the market price of products is lower than the average production costs so that

the enterprises in a particular industry have difficulty to maintain their business or encounter a situation of overproduction; or

7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small-medium enterprises.

## **Article 15**

The central competent authority may impose conditions or restrictions or require undertakings in conjunction with an approval made pursuant to the provisions of the preceding article.

The approval shall specify a time limit not exceeding three years. The enterprises involved may, with justification, file a written application for an extension thereof with the central competent authority within three months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed three years.

## **Article 16**

After a concerted action is approved, the central competent authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease from continuing the conduct or rectify its conduct, or to take necessary corrective actions if the cause for approval no longer exists, the economic condition changes, or the enterprises involved engage in any conduct beyond the scope of the approval.

## **Article 17**

The central competent authority shall establish a specific registry to record the approvals, conditions, restrictions, undertakings, time limits, and relevant dispositions referred to in the preceding three articles and publish these matters in the government gazette.

## **CHAPTER THREE UNFAIR COMPETITION**

### **Article 18**

Where an enterprise supplies goods to its trading counterpart for resale to a third party or such third party makes further resale, the trading counterpart and the third party shall be allowed to decide their resale prices freely; any agreement contrary to this provision shall be void.

### **Article 19**

No enterprise shall have any of the following acts which is likely to lessen competition or to impede fair competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise;
2. treating another enterprise discriminatively without justification;
3. causing the trading counterpart(s) of its competitors to do business with itself by coercion, inducement with interest, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part in a merger or a concerted action by coercion, inducement with interest, or other improper means;
5. acquiring the secret of production and sales, information concerning trading counterparts or other technology-related secret of any other enterprise by coercion, inducement with interest, or other improper means; or
6. limiting its trading counterparts' business activity improperly by means of the requirements of business engagement.

### **Article 20**

No enterprise shall have any of the following acts with respect to the goods or services it supplies:

1. using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another's goods, or any other symbol that represents such person's goods, commonly known to relevant enterprises or consumers, so as to cause confusion with such person's goods; or selling, transporting, exporting, or importing goods bearing such representation;
2. using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person's business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities or activities of the business or service of such person; or
3. using on the same or similar goods the mark that is identical or similar to a well-known foreign trademark that has not been registered in this country; or selling, transporting, exporting, or importing goods bearing such trademark.

The preceding paragraph shall not apply to any one of the following:

1. using in an ordinary manner the generic name customarily associated with the goods or the representation customarily used in the trade of the same category of goods; or selling, transporting, exporting or importing goods bearing such name or representation;
2. using in an ordinary manner the name or representation that is customarily used in the trade of the same type of business or service;
3. using in good faith one's own name, or selling, transporting, exporting or importing goods bearing such name; or
4. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the preceding paragraph before such representation having become commonly known to the relevant enterprises or consumers, or using such representation by any successor that acquires such representation together with the business from a bona fide user; or selling, transporting, exporting or importing goods bearing such representation.

Where any enterprise has any of the acts set forth in the third and fourth

subparagraphs of the preceding paragraph which is likely to damage or cause confusion with the business, goods, facilities, or activities of another enterprise, the latter enterprise may request the former to add appropriate representation unless the former only transports such goods.

## **Article 21**

No enterprise shall make or use false or misleading representations or symbols as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public.

No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.

The two preceding paragraphs shall apply *mutatis mutandis* to the services of an enterprise.

Where any advertising agency makes or designs any advertisement that it knows or is able to know is misleading, it shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. Where any advertising medium communicates or publishes any advertisement that it knows or is able to know is likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising therefrom.

## **Article 22**

No enterprise shall, for the purpose of competition, make or disseminate any false statement that is able to damage the business reputation of another.

## **Article 23**

No multi-level sale shall be conducted if the participants thereof receive commissions, bonuses, or other economic benefit mainly from introducing others to participate, rather than from the marketing or sale of the goods or services at reasonable market prices.

### **Article 23-1**

Any participant in multi-level sales may rescind the participation agreement by giving the multi-level enterprise written notice within fourteen days after entering into such agreement.

Within a period of thirty days after rescission of the agreement takes effect, the multi-level sales enterprise shall accept the application from the participant for returning of goods, collect or accept goods returned by the participant, and return to the participant all the payment for goods made upon purchase and any other fees paid upon participation, accumulated until the time of rescission.

In returning the payments made by the participant according to the preceding paragraph, the multi-level sales enterprise may deduct, upon the time of returning of the goods, the value decreased due to the damage or loss attributable to the participant, and any bonus or remuneration already paid to the participant for purchase of such goods.

If the returned goods as referred to in the preceding paragraph are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

### **Article 23-2**

After the lapse of the period for entitlement to rescind the agreement as referred to in the first paragraph of the preceding article, the participant may still terminate the agreement by writing and withdraw itself from the multi-level sales.

Within thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level sales enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price; provided that it may be deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.

### **Article 23-3**

When the participant exercises the right to rescind or terminate the agreement in accordance with the two preceding articles, the multi-level sales enterprise may not

claim damages or levy penalties against the participant for such rescission or termination.

The provisions of the two preceding articles that relate to goods shall apply *mutatis mutandis* to the supply of services.

### **Article 23-4**

In addition to the provisions of this Law, regulations concerning any multi-level sales enterprise's filing for record, inspection of activities, notices to participants, and the content of participation agreements as well as the protection of participants' interests are to be promulgated by the central competent authority.

### **Article 24**

In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.

## **CHAPTER FOUR FAIR TRADE COMMISSION**

### **Article 25**

In order to manage matters in respect of fair trade as set forth in this Law, the Executive Yuan shall establish the Fair Trade Commission, which shall be in charge of the following matters:

1. preparation and formulation of fair trade policy, laws and regulations;
2. review of any fair trade matters related to this Law;
3. investigation of activities of enterprises and economic conditions;
4. investigation and disposition of any case violating this Law; and
5. any other matters related to fair trade.

### **Article 26**

The Fair Trade Commission may investigate and handle, upon complaints or ex

officio, any violation of the provisions of this Law that harms public interests.

### **Article 27**

In conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:

1. to notify the parties and any related third party to appear to make statements;
2. to notify relevant agencies, organizations, enterprises, or individuals to submit books and records, documents, and any other necessary materials or exhibits, and
3. to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organizations or enterprises.

An investigator carrying out its duties under this Law shall present the documents supporting its duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.

### **Article 28**

The Fair Trade Commission shall carry out its duties independently in accordance with the law and may dispose of the cases in respect of fair trade in the name of the Commission.

### **Article 29**

There shall be a separate law enacted to govern the organizational structure of the Fair Trade Commission.

## **CHAPTER FIVE COMPENSATION FOR DAMAGES**

### **Article 30**

If any enterprise violates any of the provisions of this Law and thereby infringes upon the rights and interests of another, the injured may demand the removal of such

infringement; if there is a likelihood of infringement, prevention may also be claimed.

### **Article 31**

Any enterprise that violates any of the provisions of this Law and thereby infringes upon the rights and interests of another shall be liable for the damages arising therefrom.

### **Article 32**

In response to the request of the person being injured as referred to in the preceding article, a court may, taking into consideration of the nature of the infringement, award damages more than actual damages if the violation is intentional; provided that no award shall exceed three times of the amount of damages that is proven.

Where the infringing person gains from its act of infringement, the injured may request to assess the damages exclusively based on the monetary gain to such infringing person.

### **Article 33**

No claim for damages as prescribed in this Chapter shall be allowed unless the right is exercised within two years after the claimant knows the act and the person liable for the damages; nor shall the claim be allowed after lapse of ten years from the time of infringing conduct.

### **Article 34**

In filing a suit with a court in accordance with this Law, the injured may request the content of the judgment to be published in a newspaper at the expense of the infringing party.

## **CHAPTER SIX PUNISHMENT**

### **Article 35**

If any enterprise violating the provisions of Articles 10, 14, or paragraph 1 of Article 20 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

Any person violating any of the provisions of Article 23 shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

### **Article 36**

If any enterprise violating the provisions of Article 19 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

### **Article 37**

Shall any enterprise violate the provisions of Article 22, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

No action shall be brought against the violation referred to in the preceding paragraph unless there is a complaint filed.

### **Article 38**

Shall any juristic person be convicted of the violation referred to in any of the three preceding articles, not only the actor shall be punished in accordance with the provisions of the three preceding articles, the juristic person shall also be fined as prescribed in each of the respective articles.

### **Article 39**

Where other laws provide for more severe punishment than that prescribed in the preceding four articles, the provisions of such other laws shall apply.

### **Article 40**

Where any enterprise(s) fail to file an application for any merger required for approval or proceed with such merger despite that the application is not approved, in addition to the disposition pursuant to the provisions of Article 13, an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars shall be assessed upon such enterprise.

### **Article 41**

The Fair Trade Commission may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Fair Trade Commission may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess

thereupon an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

## **Article 42**

Any person violating the provisions of Article 23, in addition to being subject to the disposition pursuant to the provisions of Article 41, may be subject to an order for dissolution, suspension or termination of business operation if the violation is serious.

Any person violating any of the provisions of paragraph 2 of Article 23-1, paragraph 2 of Article 23-2, or Article 23-3, may be ordered to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order; in addition, an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars may be assessed upon it. After the lapse of the prescribed period, shall it fail to cease therefrom, rectify its conduct or take any necessary corrective action within the time prescribed, it may be ordered continuously to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed, and in addition, an administrative penalty of not less than fifty thousand nor more than fifty million New Taiwan Dollars may be assessed successively thereupon each time until it ceases therefrom, rectifies its conduct, or takes necessary corrective action. Shall the violation be serious, an order for dissolution of the enterprise or suspension or termination of its operations may be made.

Any enterprise violating the regulations which is promulgated by the central competent authority pursuant to the provisions of Article 23-4 shall be subject to the disposition prescribed in Article 41.

## **Article 43**

Shall any person subject to any investigation conducted by the Fair Trade Commission pursuant to the provisions of Article 27 refuse the investigation without justification, or refuse to appear to respond or to render relevant materials such as books and records, documents, or exhibits by the set time limit, an administrative

penalty of not less than twenty thousand nor more than two hundred fifty thousand New Taiwan Dollars shall be assessed upon that. Shall such person continue to refuse without justification upon another notice, the Fair Trade Commission may continue to issue notices of investigations, and may assess successively thereupon an administrative penalty of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars each time until it accepts the investigation, appears to respond, or renders relevant materials like books and records, documents, or exhibits.

#### **Article 44**

Shall any person upon which an administrative penalty is assessed pursuant to the preceding four articles refuse to pay such penalty, the matter shall be referred to the court for compulsory execution.

## **CHAPTER SEVEN SUPPLEMENTARY PROVISIONS**

#### **Article 45**

No provision of this Law shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Law, Trademark Law, or Patent Law.

#### **Article 46**

Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern, provided that it does not conflict with the legislative purposes of this Law.

#### **Article 47**

Any unrecognized foreign juristic person or organization may file a complaint for public prosecution, private prosecution, or civil action pursuant to the provisions of this Law; provided, however that any national or organization of the Republic of

China in the country of such foreign juristic person or organization must be entitled to the right of the kind in accordance with any treaty, or any law, regulation, or custom of such country; or through any agreement entered into by any organization(s) or institution(s) and approved by the central competent authority, for mutual protection.

### **Article 48**

The implementing rules of this Law shall be made and promulgated by the central competent authority.

### **Article 49**

This Law shall take effect one year from promulgation.

Amendments to this Law shall take effect from the date of promulgation.

## **Appendix III**

# **THE FAIR TRADE LAW OF 2000**

*Promulgated on February 4, 1991, Effective on February 4, 1992;  
Amendments Promulgated on February 3, 1999, Effective on February 5, 1999  
(The 1999 Amendments amended Articles 10, 11, 16, 18, 19, 20, 21, 23, 35, 36, 37 and  
40, 41, 42, 46, 49, and added Articles 23-1, 23-2, 23-3, and 23-4.);  
Amendment of Article 9 Promulgated on April 26, 2000*

## **CHAPTER ONE GENERAL PRINCIPLES**

### **Article 1**

This Law is enacted for the purposes of maintaining trading order, protecting consumers' interests, ensuring fair competition, and promoting economic stability and prosperity. Unless otherwise provided for in this Law the provisions of other relevant laws shall apply.

### **Article 2**

The term "enterprise" as used in this Law shall include,

1. a company,
2. a sole proprietorship or partnership,
3. a trade association, and
4. any other person or organization engaging in transactions through the provision of goods or services.

### **Article 3**

The term "trading counterpart" as used in this Law means any supplier or purchaser that engages in or concludes transactions with an enterprise.

## **Article 4**

The term “competition” as used in this Law means any conduct of one enterprise to contest trading opportunities in the same market with one or more enterprises through offering more favorable price, quantity, quality, service or any other terms.

## **Article 5**

The term “monopolistic enterprise” as used in this Law means any enterprise that faces no competition or has a dominant position to enable it to exclude competition in a relevant market.

Two or more enterprises shall be deemed monopolistic enterprises if they do not, in fact, engage in price competition with each other and they as a whole has the same status as the enterprise defined in the provisions of the preceding paragraph.

The term “relevant market” as used in the first paragraph means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services.

## **Article 6**

The term “merger” as used in this Law means a situation:

1. where an enterprise and another enterprise are merged into one;
2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise;
3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter’s business; or
5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the acquiring enterprise under subparagraph 2 shall be included.

## **Article 7**

The term “concerted action” as used in this Law means the conduct of any enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods and services, etc., and thereby to restrict each other’s business activities.

## **Article 8**

The term “multi-level sales” as used in this Law means the promotion or sales plan or organization pursuant to which the participants pay a certain consideration to obtain the right to promote or sell goods or services and the right to introduce other persons to participate in the plan or organization, thereby receiving a commission, bonus, or other economic benefit.

“To pay a certain consideration” as used in the preceding paragraph means the payment of money, the purchase of goods, the provision of services or the undertaking of an obligation.

## **Article 9**

The term “competent authority” as used in this Law means the Fair Trade Commission, Executive Yuan, at the central government level; the metropolitan government at the metropolitan level; and the county (or city) government at the county (or city) level.

For any matter provided for in this Law that concerns the authorities of any other ministry or commission, the Fair Trade Commission, Executive Yuan, may consult with such other ministry or commission to deal therewith.

## **CHAPTER TWO**

### **MONOPOLIES, MERGERS AND CONCERTED ACTIONS**

#### **Article 10**

No monopolistic enterprises shall:

1. directly or indirectly prevent any other enterprises from competing by unfair means;
2. improperly set, maintain or change the price for goods or the remuneration for services;
3. make a trading counterpart give preferential treatment without justification; or
4. otherwise abuse its market power.

#### **Article 11**

For any merger that falls within any of the following circumstances, an application for approval shall be filed with the central competent authority:

1. as a result of the merger the enterprise(s) will have one third of the market share;
2. one of the enterprises in the merger has one fourth of the market share; or
3. sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the central competent authority.

The central competent authority shall make a decision of approval or rejection within two months from the receipt of an application filed in accordance with the preceding paragraph.

#### **Article 12**

The central competent authority may approve an application for merger filed pursuant to the preceding article if the overall economic benefit of the merger outweighs the disadvantages resulting from competition restraint.

### **Article 13**

Where any enterprise fails to file an application for any merger that is required for approval, or proceeds with the merger despite that the application is not approved, the central competent authority may prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from positions, or make any other necessary dispositions.

For enterprise(s) violating the disposition made by the central competent authority pursuant to the preceding paragraph, the central competent authority may order the dissolution of such enterprise(s), or the suspension or termination of their operations.

### **Article 14**

No enterprise shall have any concerted action; unless the concerted action that meets the requirements under one of the following circumstances is beneficial to the economy as a whole and in the public interest, and the central competent authority has approved such concerted action:

1. unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;
2. joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
3. each developing a separate and specialized area for the purpose of rationalizing operations;
4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade;
6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, while in economic downturn, the market price of products is lower than the average production costs so that

the enterprises in a particular industry have difficulty to maintain their business or encounter a situation of overproduction; or

7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small-medium enterprises.

## **Article 15**

The central competent authority may impose conditions or restrictions or require undertakings in conjunction with an approval made pursuant to the provisions of the preceding article.

The approval shall specify a time limit not exceeding three years. The enterprises involved may, with justification, file a written application for an extension thereof with the central competent authority within three months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed three years.

## **Article 16**

After a concerted action is approved, the central competent authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease from continuing the conduct or rectify its conduct, or to take necessary corrective actions if the cause for approval no longer exists, the economic condition changes, or the enterprises involved engage in any conduct beyond the scope of the approval.

## **Article 17**

The central competent authority shall establish a specific registry to record the approvals, conditions, restrictions, undertakings, time limits, and relevant dispositions referred to in the preceding three articles and publish these matters in the government gazette.

## **CHAPTER THREE UNFAIR COMPETITION**

### **Article 18**

Where an enterprise supplies goods to its trading counterpart for resale to a third party or such third party makes further resale, the trading counterpart and the third party shall be allowed to decide their resale prices freely; any agreement contrary to this provision shall be void.

### **Article 19**

No enterprise shall have any of the following acts which is likely to lessen competition or to impede fair competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise;
2. treating another enterprise discriminatively without justification;
3. causing the trading counterpart(s) of its competitors to do business with itself by coercion, inducement with interest, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part in a merger or a concerted action by coercion, inducement with interest, or other improper means;
5. acquiring the secret of production and sales, information concerning trading counterparts or other technology related secret of any other enterprise by coercion, inducement with interest, or other improper means; or
6. limiting its trading counterparts' business activity improperly by means of the requirements of business engagement.

### **Article 20**

No enterprise shall have any of the following acts with respect to the goods or services it supplies:

1. using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another's goods, or any other symbol that represents such person's goods, commonly known to relevant enterprises or consumers, so as to cause confusion with such person's goods; or selling, transporting, exporting, or importing goods bearing such representation;
2. using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person's business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities or activities of the business or service of such person; or
3. using on the same or similar goods the mark that is identical or similar to a well-known foreign trademark that has not been registered in this country; or selling, transporting, exporting, or importing goods bearing such trademark.

The preceding paragraph shall not apply to any one of the following:

1. using in an ordinary manner the generic name customarily associated with the goods or the representation customarily used in the trade of the same category of goods; or selling, transporting, exporting or importing goods bearing such name or representation;
2. using in an ordinary manner the name or representation that is customarily used in the trade of the same type of business or service;
3. using in good faith one's own name, or selling, transporting, exporting or importing goods bearing such name; or
4. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the preceding paragraph before such representation having become commonly known to the relevant enterprises or consumers, or using such representation by any successor that acquires such representation together with the business from a bone fide user; or selling, transporting, exporting or importing goods bearing such representation.

Where any enterprise has any of the acts set forth in the third and fourth

subparagraphs of the preceding paragraph which is likely to damage or cause confusion with the business, goods, facilities, or activities of another enterprise, the latter enterprise may request the former to add appropriate representation unless the former only transports such goods.

## **Article 21**

No enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making them known to the public.

No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.

The two preceding paragraphs shall apply *mutatis mutandis* to the services of an enterprise.

Where any advertising agency makes or designs any advertisement that it knows or is able to know is misleading, it shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. Where any advertising medium communicates or publishes any advertisement that it knows or is able to know is likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising therefrom.

## **Article 22**

No enterprise shall, for the purpose of competition, make or disseminate any false statement that is able to damage the business reputation of another.

## **Article 23**

No multi-level sale shall be conducted if the participants thereof receive commissions, bonuses, or other economic benefit mainly from introducing others to participate, rather than from the marketing or sale of the goods or services at reasonable market prices.

### **Article 23-1**

Any participant in multi-level sales may rescind the participation agreement by giving the multi-level enterprise written notice within fourteen days after entering into such agreement.

Within a period of thirty days after rescission of the agreement takes effect, the multi-level sales enterprise shall accept the application from the participant for returning of goods, collect or accept goods returned by the participant, and return to the participant all the payment for goods made upon purchase and any other fees paid upon participation, accumulated until the time of rescission.

In returning the payments made by the participant according to the preceding paragraph, the multi-level sales enterprise may deduct upon the time of returning of the goods the value decreased due to the damage or loss attributable to the participant, and any bonus or remuneration already paid to the participant for purchase of such goods.

If the returned goods as referred to in the preceding paragraph are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

### **Article 23-2**

After the lapse of the period for entitlement to rescind the agreement as referred to in the first paragraph of the preceding article, the participant may still terminate the agreement by writing and withdraw itself from the multi-level sales.

Within thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level sales enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price; provided that it may be deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.

### **Article 23-3**

When the participant exercises the right to rescind or terminate the agreement in accordance with the two preceding articles, the multi-level sales enterprise may not

claim damages or levy penalties against the participant for such rescission or termination.

The provisions of the two preceding articles that relate to goods shall apply *mutatis mutandis* to the supply of services.

### **Article 23-4**

In addition to the provisions of this Law, regulations concerning any multi-level sales enterprise' filing for record, inspection of activities, notices to participants, and the content of participation agreements as well as the protection of participants' interest are to be promulgated by the central competent authority.

### **Article 24**

In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.

## **CHAPTER FOUR FAIR TRADE COMMISSION**

### **Article 25**

In order to manage matters in respect of fair trade as set forth in this Law, the Executive Yuan shall establish the Fair Trade Commission, which shall be in charge of the following matters:

1. preparation and formulation of fair trade policy, laws and regulations;
2. review of any fair trade matters related to this Law;
3. investigation of activities of enterprises and economic conditions;
4. investigation and disposition of any case violating this Law; and
5. any other matters related to fair trade.

### **Article 26**

The Fair Trade Commission may investigate and handle, upon complaints or ex officio, any violation of the provisions of this Law that harms the public interest.

### **Article 27**

In conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:

1. to notify the parties and any related third party to appear to make statements;
2. to notify relevant agencies, organizations, enterprises, or individuals to submit books and records, documents, and any other necessary materials or exhibits, and
3. to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organization or enterprises.

An investigator carrying out its duties under this Law shall present the documents supporting its duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.

### **Article 28**

The Fair Trade Commission shall carry out its duties independently in accordance with the law and may dispose of the cases in respect of fair trade in the name of the Commission.

### **Article 29**

There shall be a separate law enacted to govern the organizational structure of the Fair Trade Commission.

## **CHAPTER FIVE COMPENSATION FOR DAMAGES**

### **Article 30**

If any enterprise violates any of the provisions of this Law and thereby infringes upon the rights and interests of another, the injured may demand the removal of such infringement; if there is a likelihood of infringement, prevention may also be claimed.

### **Article 31**

Any enterprise that violates any of the provisions of this Law and thereby infringes upon the rights and interests of another shall be liable for the damages arising therefrom.

### **Article 32**

In response to the request of the injured person being injured as referred to in the preceding article, a court may, taking into consideration of the nature of the infringement, award damages more than actual damages if the violation is intentional; provided that no award shall exceed three times of the amount of damages that is proven.

Where the infringing person gains from his/her act of infringement, the injured may request to assess the damages exclusively, based on the monetary gain to such infringing person.

### **Article 33**

No claim for damages as prescribed in this Chapter shall be allowed unless the right is exercised within two years after the claimant knows the act and the person liable for the damages; nor shall the claim be allowed after lapse of ten years from the time of the infringing conduct.

### **Article 34**

In filing a suit with a court in accordance with this Law, the injured may request the content of the judgment to be published in a newspaper at the expense of the infringing party.

## **CHAPTER SIX PUNISHMENT**

### **Article 35**

If any enterprise violating the provisions of Articles 10, 14, or paragraph 1 of

Article 20 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

Any person violating any of the provisions of Article 23 shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

### **Article 36**

If any enterprise violating the provisions of Article 19 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

### **Article 37**

Shall any enterprise violate the provisions of Article 22, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

No action shall be brought against the violation referred to in the preceding paragraph unless there is a complaint filed.

### **Article 38**

Shall any juristic person be convicted of the violation referred to in any of the

three preceding articles, not only the actor shall be punished in accordance with the provisions of the three preceding articles, the juristic person shall also be fined as prescribed in each of the respective articles.

### **Article 39**

Where other laws provide for more severe punishment than that prescribed in the preceding four articles, the provisions of such other laws shall apply.

### **Article 40**

Where any enterprise fail to file an application for any merger required for approval or proceed with such merger despite that the application is not approved, in addition to the disposition pursuant to the provisions of Article 13, an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars shall be assessed upon such enterprise.

### **Article 41**

The Fair Trade Commission may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars. Shall such enterprise fail to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Fair Trade Commission may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

### **Article 42**

Any person violating the provisions of Article 23, in addition to being subject to

the disposition pursuant to the provisions of Article 41, may be subject to an order for dissolution, suspension or termination of business operation if the violation is serious. Any person violating any of the provisions of paragraph 2 of Article 23-1, paragraph 2 of Article 23-2, or Article 23-3, may be ordered to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order; in addition, an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars may be assessed upon it. After the lapse of the prescribed period, shall it fail to cease therefrom, rectify its conduct or take any necessary corrective action within the time prescribed, it may be ordered continuously to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed, and in addition, an administrative penalty of not less than fifty thousand nor more than fifty million New Taiwan Dollars may be assessed successively thereupon each time until it ceases therefrom, rectifies its conduct, or takes necessary corrective action. Shall the violation be serious, an order for dissolution of the enterprise or suspension or termination of its operations may be made.

Any enterprise violating the regulations which is promulgated by the central competent authority pursuant to the provisions of Article 23-4 shall be subject to the disposition prescribed in Article 41.

### **Article 43**

Shall any person subject to any investigation conducted by the Fair Trade Commission pursuant to the provisions of Article 27 refuse the investigation without justification, or refuse to appear to respond or to render relevant materials such as books and records, documents, or exhibits by the set time limit, an administrative penalty of not less than twenty thousand nor more than two hundred fifty thousand New Taiwan Dollars shall be assessed upon it. Shall such person continue to refuse without justification upon another notice, the Fair Trade Commission may continue to issue notices of investigations, and may assess successively thereupon an administrative penalty of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars each time until it accepts the investigation, appears to

respond, or renders relevant materials like books and records, documents, or exhibits.

#### **Article 44**

Shall any person upon which an administrative penalty is assessed pursuant to the preceding four articles refuse to pay such penalty, the matter shall be referred to the court for compulsory execution.

## **CHAPTER SEVEN SUPPLEMENTARY PROVISIONS**

#### **Article 45**

No provision of this Law shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Law, Trademark Law, or Patent Law.

#### **Article 46**

Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern; provided that it does not conflict with the legislative purposes of this Law.

#### **Article 47**

Any unrecognized foreign juristic person or organization may file a complaint for public prosecution, private prosecution, or civil action pursuant to the provisions of this Law; provided, however that any national or organization of the Republic of China in the country of such foreign juristic person or organization must be entitled to the right of the kind in accordance with any treaty, or any law, regulation, or custom of such country; or through any agreement entered into by any organization(s) or institution(s) and approved by the central competent authority, for mutual protection.

## **Article 48**

The implementing rules of this Law shall be made and promulgated by the central competent authority.

## **Article 49**

This Law shall take effect one year from promulgation.

Amendments to this Law shall take effect from the date of promulgation.

## **Appendix IV**

### **THE FAIR TRADE LAW OF 2002**

*Promulgated on February 4, 1991, Effective on February 4, 1992;  
Amendments Promulgated on February 3, 1999, Effective on February 5, 1999;  
(The 1999 Amendments amended Articles 10, 11, 16, 18, 19, 20, 21, 23, 35, 36,  
37, 40, 41, 42, 46 and 49, and added Articles 23-1, 23-2, 23-3 and 23-4.)  
Amendment of Article 9 Promulgated on April 26, 2000;  
Amendment Promulgated on February 6, 2002.  
(The 2002 Amendments amended Articles 7, 8, 11 12, 13, 14, 15, 16, 17, 23-4  
and 40 and added Articles 5-1, 11-1, 27-1 and 42-1.)*

### **CHAPTER ONE GENERAL PRINCIPLES**

#### **Article 1**

This Law is enacted for the purposes of maintaining trading order, protecting consumers' interests, ensuring fair competition, and promoting economic stability and prosperity. Unless otherwise provided for in this Law the provisions of other relevant laws shall apply.

#### **Article 2**

The term "enterprise" as used in this Law shall include:

1. a company,
2. a sole proprietorship or partnership,
3. a trade association, and
4. any other person or organization engaging in transactions through the provision of goods or services.

### **Article 3**

The term “trading counterpart” as used in this Law means any supplier or purchaser that engages in or concludes transactions with an enterprise.

### **Article 4**

The term “competition” as used in this Law means any conduct of one enterprise to contest trading opportunities in the same market with one or more enterprises through offering more favorable price, quantity, quality, service or any other terms.

### **Article 5**

The term “monopolistic enterprise” as used in this Law means any enterprise that faces no competition or has a dominant position to enable it to exclude competition in a relevant market.

Two or more enterprises shall be deemed monopolistic enterprises if they do not in fact engage in price competition with each other and they as a whole have the same status as the enterprise defined in the provisions of the preceding paragraph.

The term “relevant market” as used in the first paragraph means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services.

### **Article 5-1**

An enterprise shall not be deemed a monopolistic enterprise as defined in the preceding article if none of the following circumstances exists:

1. the market share of the enterprise in a relevant market reaches one-half of the market;
2. the combined market share of two enterprises in a relevant market reaches two-thirds of the market; and
3. the combined market share of three enterprises in a relevant market reaches three-fourths of the market.

Under any of the circumstances set forth in the preceding paragraph, where the market share of any individual enterprise does not reach one-tenth of the relevant

market or where its total sales in the preceding fiscal year are less than one billion New Taiwan Dollars, such enterprise shall not be deemed as a monopolistic enterprise.

An enterprise exempt from being deemed as a monopolistic enterprise by any of the preceding two paragraphs may still be deemed a monopolistic enterprise by the Central Competent Authority if the establishment of such enterprise or any of the goods or services supplied by such enterprise to a relevant market is subject to legal or technological restraints, or there exists any other circumstance under which the supply and demand of the market are affected and the ability of others to compete is impeded.

## **Article 6**

The term “merger” as used in this Law means a situation:

1. where an enterprise and another enterprise are merged into one;
2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise;
3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter’s business; or
5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the acquiring enterprise under subparagraph 2 shall be included.

## **Article 7**

The term “concerted action” as used in this Law means the conduct of any enterprise, by means of contract, agreement or any other form of mutual

understanding, with any other competing enterprise, to jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods and services, etc., and thereby to restrict each other's business activities.

The term "concerted action" as used in the preceding paragraph is limited to horizontal concerted action at the same production and/or marketing stage which would affect the market function of production, trade in goods, or supply and demand of services.

The term "any other form of mutual understanding" as used in Paragraph 1 means other than contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions.

By means of its charter, a resolution of a general meeting of members or a board meeting of directors or supervisors, or any other means, to restrict activities of enterprises is also deemed as horizontal concerted action as used in Paragraph 2.

## **Article 8**

The term "multi-level sales" as used in this Law means the promotion or sales plan or organization pursuant to which the participants pay a certain consideration to obtain the right to promote or sell goods or services and the right to introduce other persons to participate in the plan or organization, thereby receiving a commission, bonus, or other economic benefit.

"To pay a certain consideration" as used in the preceding paragraph means the payment of money, the purchase of goods, the provision of services, or the undertaking of an obligation.

The term "multi-level sales enterprise" as used in this Law means an enterprise that adopts a multi-level sales operations plan or organization and conducts overall planning of multi-level sales activity.

A participant of a foreign enterprise or a third party that introduces the multi-level sales plans or organizations of such enterprise shall be deemed a "multi-level sales enterprise" as referred to in the preceding paragraph.

The term "participant" as used in this Law means the following:

1. a person who takes part in the organization or plans of a multi-level sales enterprise and promotes or sells goods or services, and may introduce other persons to participate;
2. a person who, by agreement with a multi-level sales enterprise, obtains the right to promote or sell goods or services and introduce other persons to participate only after cumulatively paying a certain amount of consideration.

### **Article 9**

The term “competent authority” as used in this Law means the Fair Trade Commission, Executive Yuan, at the central government level; the metropolitan government at the metropolitan level; and the county (or city) government at the county (or city) level.

For any matter provided for in this Law that concerns the authorities of any other ministries or commissions, the Fair Trade Commission, Executive Yuan may consult with such other ministries or commissions to deal therewith.

## **CHAPTER TWO MONOPOLIES, MERGERS AND CONCERTED ACTIONS**

### **Article 10**

No monopolistic enterprises shall:

1. directly or indirectly prevent any other enterprises from competing by unfair means;
2. improperly set, maintain or change the price for goods or the remuneration for services;
3. make a trading counterpart give preferential treatment without justification; or
4. otherwise abuse its market power.

### **Article 11**

Any merger that falls within any of the following circumstances shall be filed

with the central competent authority in advance:

1. as a result of the merger the enterprise(s) will have one third of the market share;
2. one of the enterprises in the merger has one fourth of the market share; or
3. sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the central competent authority.

The threshold amount of the sales referred to in Subparagraph 3 of the preceding paragraph may be announced separately for financial enterprises and non-financial enterprises by the Central Competent Authority.

Enterprises shall not proceed to merge within a period of 30 days from the date the Central Competent Authority accepts the complete filing materials, provided that the Central Competent Authority may shorten or extend the period as it deems necessary and notifies the filing enterprise of such change in writing.

Where the Central Competent Authority extends the period in accordance with the proviso of the preceding paragraph, such extension may not exceed 30 days; for cases of extension, decisions on the filing shall be made in accordance with the provisions of Article 12.

Where the Central Competent Authority fails to notify of the extension as referred to in the proviso of Paragraph 3 or makes any decision as referred to in the preceding paragraph when the period is going to expire, the enterprises may proceed to merge provided that the merger may not proceed under any of the following circumstances:

1. where the filing enterprises consent to a further extension of the period.
2. where the filing contains any false or misleading item.

## **Article 11-1**

The provisions of Paragraph 1 of the preceding Article shall not apply to any of the following circumstances:

1. where any of the enterprises participating in a merger already holds no less than 50% of the voting shares or capital contribution of another enterprise in the merger and merges such other enterprise .
2. where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise merge.
3. where an enterprise assigns all or a principal part of its business or assets, or all or part of any part of its business that could be separately operated, to another enterprise newly established by the former enterprise solely.
4. where an enterprise, pursuant to the proviso of Article 167, Paragraph 1 of the Company Law or Article 28-2 of the Securities and Exchange Law, redeems its shares held by shareholders so that its original shareholders' shareholding falls within the circumstances provided for in Article 6, Paragraph 1, Subparagraph 2 herein.

## **Article 12**

The Central Competent Authority may not prohibit any of the mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

The Central Competent Authority may attach conditions or require undertakings in any of the decisions it makes on the filing cases referred to in Article 11, Paragraph 4 herein in order to ensure that the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

## **Article 13**

Where any enterprise(s) proceeds with a merger in violation of Paragraph 1 or 3 of Article 11 herein, or proceeds with a merger despite that the Central Competent Authority decides upon the filing to prohibit such merger, or fails to perform the undertakings required as pursuant to Paragraph 2 of the preceding Article, the Central Competent Authority may prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from positions, or make any other necessary

dispositions.

For enterprise(s) violating the disposition made by the central competent authority pursuant to the preceding paragraph, the central competent authority may order the dissolution of such enterprise(s), or the suspension or termination of their operations.

## **Article 14**

No enterprise shall have any concerted action; unless the concerted action that meets one of the following requirements is beneficial to the economy as a whole and in the public interest, and the application with the central competent authority for such concerted action has been approved:

1. unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;
2. joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
3. each developing a separate and specialized area for the purpose of rationalizing operations;
4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade;
6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, while in economic downturn, the market price of products is lower than the average production costs so that the enterprises in a particular industry have difficulty to maintain their business or encounter a situation of overproduction; or
7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small-medium enterprises.

After receipt of the application referred to in the preceding Article, the Central Competent Authority shall make a decision of approval or rejection within three

months, the period of which may be extended once if necessary.

### **Article 15**

The central competent authority may attach conditions or require undertakings in the approval it grants pursuant to the provisions of the preceding article.

The approval shall specify a time limit not exceeding three years. The enterprises involved may, with justification, file a written application for an extension thereof with the Central Competent Authority within three months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed three years.

### **Article 16**

After a concerted action is approved, the Central Competent Authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease from continuing the conduct or rectify its conduct, or to take necessary corrective actions if the cause for approval no longer exists, the economic condition changes, or the enterprises involved engage in any conduct beyond the scope of approval.

### **Article 17**

The Central Competent Authority shall establish a specific registry to record the approvals, conditions, undertakings, time limits, and relevant dispositions referred to in the preceding three articles and publish these matters in the government gazette.

## **CHAPTER THREE UNFAIR COMPETITION**

### **Article 18**

Where an enterprise supplies goods to its trading counterpart for resale to a third party or such third party makes further resale, the trading counterpart and the third

party shall be allowed to decide their resale prices freely; any agreement contrary to this provision shall be void.

## **Article 19**

No enterprise shall have any of the following acts which is likely to lessen competition or to impede fair competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise;
2. treating another enterprise discriminatively without justification;
3. causing the trading counterpart(s) of its competitors to do business with itself by coercion, inducement with interest, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part in a merger or a concerted action by coercion, inducement with interest, or other improper means;
5. acquiring the secret of production and sales, information concerning trading counterparts or other technology related secret of any other enterprise by coercion, inducement with interest, or other improper means; or
6. limiting its trading counterparts' business activity improperly by means of the requirements of business engagement.

## **Article 20**

No enterprise shall have any of the following acts with respect to the goods or services it supplies:

1. using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another's goods, or any other symbol that represents such person's goods, commonly known to relevant enterprises or consumers, so as to cause confusion with such person's goods; or selling, transporting, exporting, or importing goods bearing such representation;

2. using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person's business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities or activities of the business or service of such person; or
3. using on the same or similar goods the mark that is identical or similar to a well-known foreign trademark that has not been registered in this country; or selling, transporting, exporting, or importing goods bearing such trademark.

The preceding paragraph shall not apply to any one of the following:

1. using in an ordinary manner the generic name customarily associated with the goods or the representation customarily used in the trade of the same category of goods; or selling, transporting, exporting or importing goods bearing such name or representation;
2. using in an ordinary manner the name or representation that is customarily used in the trade of the same type of business or service;
3. using in good faith one's own name, or selling, transporting, exporting or importing goods bearing such name; or
4. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the preceding paragraph before such representation having become commonly known to the relevant enterprises or consumers, or using such representation by any successor that acquires such representation together with the business from a bone fide user; or selling, transporting, exporting or importing goods bearing such representation.

Where any enterprise has any of the acts set forth in the third and fourth subparagraphs of the preceding paragraph which is likely to damage or cause confusion with the business, goods, facilities, or activities of another enterprise, the latter enterprise may request the former to add appropriate representation unless the former only transports such goods.

## **Article 21**

No enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public.

No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.

The two preceding paragraphs shall apply *mutatis mutandis* to the services of an enterprise.

Where any advertising agency makes or designs any advertisement that it knows or is able to know is misleading, it shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. Where any advertising medium communicates or publishes any advertisement that it knows or is able to know is likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising therefrom.

## **Article 22**

No enterprise shall, for the purpose of competition, make or disseminate any false statement that is able to damage the business reputation of another.

## **Article 23**

No multi-level sale shall be conducted if the participants thereof receive commissions, bonuses, or other economic benefit mainly from introducing others to participate, rather than from the marketing or sale of the goods or services at reasonable market prices.

### **Article 23-1**

Any participant in multi-level sales may rescind the participation agreement by giving the multi-level enterprise written notice within fourteen days after entering into such agreement.

Within a period of thirty days after rescission of the agreement takes effect, the multi-level sales enterprise shall accept the application from the participant for returning of goods, collect or accept goods returned by the participant, and return to the participant all the payment for goods made upon purchase and any other fees paid upon participation, accumulated until the time of rescission.

In returning the payments made by the participant according to the preceding paragraph, the multi-level sales enterprise may deduct upon the time of returning of the goods the value decreased due to the damage or loss attributable to the participant, and any bonus or remuneration already paid to the participant for purchase of such goods.

If the returned goods as referred to in the preceding paragraph are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

### **Article 23-2**

After the lapse of the period for entitlement to rescind the agreement as referred to in the first paragraph of the preceding article, the participant may still terminate the agreement by writing and withdraw itself from the multi-level sales.

Within thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level sales enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price; provided that it may be deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.

### **Article 23-3**

When the participant exercises the right to rescind or terminate the agreement in accordance with the two preceding articles, the multi-level sales enterprise may not claim damages or levy penalties against the participant for such rescission or termination.

The provisions of the two preceding articles that relate to goods shall apply *mutatis mutandis* to the supply of services.

### **Article 23-4**

Regulations concerning any multi-level sales enterprise' filing for record, inspection of activities, CPA certification and public disclosure of financial statements, the matters that participants should be informed, the content of participation agreements, the protection of participants' interest, conduct prohibited as materially affecting the rights and interests of participants, and management obligations toward participants are to be promulgated by the Central Competent Authority.

### **Article 24**

In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.

## **CHAPTER FOUR FAIR TRADE COMMISSION**

### **Article 25**

In order to manage matters in respect of fair trade as set forth in this Law, the Executive Yuan shall establish the Fair Trade Commission, which shall be in charge of the following matters:

1. preparation and formulation of fair trade policy, laws and regulations;
2. review of any fair trade matters related to this Law;
3. investigation of activities of enterprises and economic conditions;
4. investigation and disposition of any case violating this Law; and
5. any other matters related to fair trade.

### **Article 26**

The Fair Trade Commission may investigate and handle, upon complaints or ex officio, any violation of the provisions of this Law that harms the public interest.

## **Article 27**

In conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:

1. to notify the parties and any related third party to appear to make statements;
2. to notify relevant agencies, organizations, enterprises, or individuals to submit books and records, documents, and any other necessary materials or exhibits, and
3. to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organization or enterprises.

An investigator carrying out its duties under this Law shall present the documents supporting its duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.

## **Article 27-1**

During the course of an investigation conducted pursuant to the preceding Article, a party or a related person, for the need of claiming or defending its legal rights and interests, may apply to read, transcribe, photocopy, or photograph relevant materials or files except the following:

1. Drafts of an administrative decision or any other working document prepared for a case.
2. Materials related to national defense, military affairs, diplomatic affairs, and any other official secrets that are required to be kept confidential by laws or regulations.
3. Materials relating to personal privacy, professional secrets, or business secrets that are required to be kept confidential by laws or regulations.
4. Where it is likely to infringe the rights and interests of a third party.
5. Where it is likely to seriously obstruct the performance of the official duties in maintaining social order, public security, or any other public interests.

Procedural matters and restrictions relating to the qualifications of applicants, the application period, the scope of materials or files available for access, and the way to proceed as referred to in the preceding paragraph shall be prescribed by the Central

Competent Authority.

### **Article 28**

The Fair Trade Commission shall carry out its duties independently in accordance with the law and may dispose of the cases in respect of fair trade in the name of the Commission.

### **Article 29**

There shall be a separate law enacted to govern the organizational structure of the Fair Trade Commission.

## **CHAPTER FIVE COMPENSATION FOR DAMAGES**

### **Article 30**

If any enterprise violates any of the provisions of this Law and thereby infringes upon the rights and interests of another, the injured may demand the removal of such infringement; if there is a likelihood of infringement, prevention may also be claimed.

### **Article 31**

Any enterprise that violates any of the provisions of this Law and thereby infringes upon the rights and interests of another shall be liable for the damages arising therefrom.

### **Article 32**

In response to the request of the person being injured as referred to in the preceding article, a court may, taking into consideration of the nature of the infringement, award damages more than actual damages if the violation is intentional; provided that no award shall exceed three times of the amount of damages that is proven.

Where the infringing person gains from its act of infringement, the injured may request to assess the damages exclusively based on the monetary gain to such infringing person.

### **Article 33**

No claim for damages as prescribed in this Chapter shall be allowed unless the right is exercised within two years after the claimant knows the act and the person liable for the damages; nor shall the claim be allowed after lapse of ten years from the time of infringing conduct.

### **Article 34**

In filing a suit with a court in accordance with this Law, the injured may request the content of the judgment to be published in a newspaper at the expenses of the infringing party.

## **CHAPTER SIX PUNISHMENT**

### **Article 35**

If any enterprise violating the provisions of Articles 10, 14, or paragraph 1 of Article 20 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

Any person violating any of the provisions of Article 23 shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than

one hundred million New Taiwan Dollars, or by both.

### **Article 36**

If any enterprise violating the provisions of Article 19 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

### **Article 37**

Shall any enterprise violate the provisions of Article 22, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

No action shall be brought against the violation referred to in the preceding paragraph unless there is a complaint filed.

### **Article 38**

Shall any juristic person be convicted of the violation referred to in any of the three preceding articles, not only the actor shall be punished in accordance with the provisions of the three preceding articles, the juristic person shall also be fined as prescribed in each of the respective articles.

### **Article 39**

Where any other laws provide for more severe punishment than those prescribed in the preceding four articles, the provisions of such other laws shall apply.

### **Article 40**

Where any enterprise(s) proceeds with a merger in violation of Paragraph 1 or 3

of Article 11 herein, or proceeds with a merger despite that the Central Competent Authority decides upon the filing to prohibit such merger, or fails to perform the undertakings required as pursuant to Paragraph 2 of Article 12, in addition to the disposition pursuant to the provisions of Article 13, an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars shall be assessed upon such enterprise(s).

Where any enterprise(s) proceeds with a merger under the circumstance set forth in Subparagraph 2 of the proviso of Article 11, Paragraph 5, an administrative penalty of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars shall be assessed upon such enterprise(s).

## **Article 41**

The Fair Trade Commission may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Fair Trade Commission may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

## **Article 42**

Any person violating the provisions of Article 23, in addition to being subject to the disposition pursuant to the provisions of Article 41, may be subject to an order for dissolution, suspension or termination of business operation if the violation is serious.

Any person violating any of the provisions of paragraph 2 of Article 23-1, paragraph 2 of Article 23-2, or Article 23-3, may be ordered to cease therefrom,

rectify its conduct, or take necessary corrective action within the time prescribed in the order; in addition, an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars may be assessed upon it. After the lapse of the prescribed period, shall it fail to cease therefrom, rectify its conduct or take any necessary corrective action within the time prescribed, it may be ordered continuously to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed, and in addition, an administrative penalty of not less than fifty thousand nor more than fifty million New Taiwan Dollars may be assessed successively thereupon each time until it ceases therefrom, rectifies its conduct, or takes necessary corrective action. Shall the violation be serious, an order for dissolution of the enterprise or suspension or termination of its operations may be made.

Any enterprise violating the regulations which is promulgated by the Central Competent Authority pursuant to the provisions of Article 23-4 shall be subject to the disposition prescribed in Article 41.

### **Article 42-1**

The periods for suspension of business operation ordered pursuant to this Law shall be limited to six months each.

### **Article 43**

Shall any person subject to any investigation conducted by the Fair Trade Commission pursuant to the provisions of Article 27 refuse the investigation without justification, or refuse to appear to respond or to render relevant materials such as books and records, documents, or exhibits by the set time limit, an administrative penalty of not less than twenty thousand nor more than two hundred fifty thousand New Taiwan Dollars shall be assessed upon it. Shall such person continue to refuse without justification upon another notice, the Fair Trade Commission may continue to issue notices of investigations, and may assess successively thereupon an administrative penalty of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars each time until it accepts the investigation, appears to

respond, or renders relevant materials like books and records, documents, or exhibits.

#### **Article 44**

Shall any person upon which an administrative penalty is assessed pursuant to the preceding four articles refuse to pay such penalty, the matter shall be referred to the court for compulsory execution.

## **CHAPTER SEVEN SUPPLEMENTARY PROVISIONS**

#### **Article 45**

No provision of this Law shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Law, Trademark Law, or Patent Law.

#### **Article 46**

Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern; provided that it does not conflict with the legislative purposes of this Law.

#### **Article 47**

Any unrecognized foreign juristic person or organization may file a complaint for public prosecution, private prosecution, or civil action pursuant to the provisions of this Law; provided, however that any national or organization of the Republic of China in the country of such foreign juristic person or organization must be entitled to the right of the kind in accordance with any treaty, or any law, regulation, or custom of such country; or through any agreement entered into by any organization(s) or institution(s) and approved by the Central Competent Authority, for mutual protection.

## **Article 48**

The enforcement rules of this Law shall be made and promulgated by the Central Competent Authority.

## **Article 49**

This Law shall take effective one year from promulgation.

Amendments to this Law shall take effect from the date of promulgation.

## **Appendix V**

# **ENFORCEMENT RULES OF FAIR TRADE LAW OF 1992**

*promulgated on June 24, 1992*

### **Article 1**

These Enforcement Rules are adopted pursuant to Article 48 of the Fair Trade Law (hereinafter referred to as the “Law”).

### **Article 2**

The term “concerted action” as mentioned in Article 7 of the Law refers to an act among enterprises at the same level of production or distribution that is sufficient to influence production or the function of supply and demand in a market for goods or services.

The term “other forms of mutual understanding” as mentioned in Article 7 of the Law refers to the communications other than a contract or agreement, which, regardless of their legal enforceability, will actually result in parallel actions.

### **Article 3**

In determining whether an enterprise constitutes a monopolistic enterprise as prescribed in Paragraph 2, Article 10 of the Law, the central competent authority shall consider the following factors:

1. market share enjoyed by the enterprise in a particular market;
2. possibility of substitution of the goods or services in the market, giving regard to time and geographical considerations;
3. ability of the enterprise to influence prices in the particular market;
4. difficulty for other enterprises to enter into the particular market; and
5. import and export conditions of the goods or services.

## **Article 4**

Any enterprise not satisfying the following requirements will not be considered a monopolistic enterprise according to the preceding article:

1. a single enterprise holding a market share of one-half (1/2) or more;
2. two (2) enterprises together enjoying a market share of two-thirds (2/3) or more; and
3. three (3) enterprises together enjoying a market share of three-fourths (3/4) or more.

Although an enterprise(s) meets all of the requirements mentioned above, such an enterprise(s) shall not be considered a monopolistic enterprise if each of the enterprises individually enjoys a market share which is less than one tenth (1/10) or if each such enterprise's total sales in the preceding fiscal year was less than one (1) billion New Taiwan Dollars.

The central competent authority may still determine an enterprise which, under the preceding two paragraphs should not be included, to be a monopolistic enterprise if the establishment of such enterprise or the entry into the particular goods or service market by such enterprise is restricted by laws and regulations, technology or other conditions that may impede competition.

## **Article 5**

When calculating the market share of an enterprise, information concerning the productions, sales, inventory, import and export value (volume) of each enterprise and the relevant market shall be taken into account.

Information necessary for the calculation of the market share may be based on such information as obtained upon investigation by the central competent authority or that recorded in other government agencies.

## **Article 6**

The sales amount as mentioned in Subparagraph 3, Paragraph 1, Article 11 of the Law refers to the total sales amount of an enterprise.

The "total sales amount" as used in the preceding paragraph shall be based on

the information obtained upon investigation by the central competent authority or that recorded in other government agencies.

## **Article 7**

Application for an approval of a combination of enterprises according to Paragraph 1, Article 11 of the Law shall be filed:

1. by all enterprises participating in the combination, where an enterprise is merging with, acquiring or leasing the business or properties of, or frequently operating with other enterprises;
2. by the holding or acquiring enterprise, where an enterprise holds or acquires shares or the capital contribution of another enterprise; or
3. by the controlling enterprise, where an enterprise controls the business operation or personnel employment and termination of another enterprise.

## **Article 8**

Enterprises applying for an approval of a combination according to Paragraph 1, Article 11 of the Law shall submit the following documents to the central competent authority:

1. application form stating the following information:
  - (1) type and substance of the combination;
  - (2) name, location, residence or domicile of each participating enterprise, company, firm and organization;
  - (3) target date of combination;
  - (4) name of the attorney and power of attorney, if any; and
  - (5) other required information;
2. basic information describing each participating enterprise, including:
  - (1) name and address of the representative or administrator of each participating enterprise, if any;
  - (2) capital amount and business items of each participating enterprise;
  - (3) revenues in the preceding fiscal year of each participating enterprise and any enterprise having a controlling or subordinate relationship with it;

and

- (4) number of employees of each participating enterprise;
  3. financial statement and business report for the preceding fiscal year of each participating enterprise;
  4. information such as production or operation cost, sale price, value or amount of production and sales of related goods or services of each participating enterprise;
  5. explanation of benefits to the overall economy that the combination will bring;
- and
6. other documents or information required by the central competent authority.

The form application mentioned in the preceding paragraph shall be stipulated by the central competent authority.

## **Article 9**

If the information submitted by enterprises applying for approval of combination is incomplete or inaccurate, the central competent authority may state reasons therefor and require supplement or correction of such information within a prescribed time limit and may dismiss the application in case the required supplement or correction is not made in time.

The supplement or correction mentioned in the preceding paragraph may be submitted only once for each application.

The two-month time limit prescribed in Paragraph 3, Article 11 of the Law shall commence from the date of receipt of the application by the central competent authority, or from the date of receipt of the supplement or correction, if any information is incorrect or incomplete and supplement or correction of such information is required by the central competent authority.

## **Article 10**

If it deems necessary, the central competent authority may publish its approval or disapproval of applications for a combination of enterprises in the government gazette.

## **Article 11**

Applications for an approval of concerted actions pursuant to the provision of Article 14 of the Law shall be made jointly by the enterprises participating in the concerted actions or through their association or agent with a power of attorney.

## **Article 12**

The following documents shall be submitted by the participating enterprises for an approval of a concerted action in accordance with the provision of Article 14 of the Law:

1. application form stating the following information:
  - (1) goods or services to which the concerted action is applicable;
  - (2) type of concerted action;
  - (3) proposed implementation period and geographical area of the concerted action; and
  - (4) other required information;
2. a copy of draft contracts, agreements, or other documents relative to the concerted actions;
3. concrete substance of and implementation methods for the proposed concerted action;
4. basic information of the enterprises participating in the concerted action, including:
  - (1) name, location, residence or domicile of each participating enterprise, company, firm, trade association or organization;
  - (2) name and address of the representative or administrator, if any; and
  - (3) business items, capital amount, and the revenues in the preceding fiscal year of each participating enterprise;
5. prices, and production/sales volume/amount of the goods or service of the two (2) most recent years of each participating enterprise stated by season;
6. financial statement and business report for the preceding fiscal year of each participating enterprise;
7. impact evaluation report of the concerted action; and

8. other documents or information required by the central competent authority.

The application form mentioned in the preceding paragraph shall be stipulated by the central competent authority.

### **Article 13**

The impact evaluation report of the concerted action as referred to in Paragraph 7 of the preceding article shall state:

1. analytical data concerning cost structure and cost changes before and after the implementation of the concerted action;
2. effects of the implementation of such concerted action on enterprises not participating in the concerted action;
3. effects on structure, supply and demand, and price of the relevant market by the implementation of the concerted action;
4. effects on the upstream and downstream enterprises and their respective market after the implementation of the concerted action;
5. concrete efficiency and disadvantages to the overall economy and public interest created by the implementation of the concerted action; and
6. other required information.

### **Article 14**

Enterprises applying for an approval pursuant to Subparagraph 1 or 3, Article 14 of the Law shall provide in the impact evaluation report concrete expected effects in cost reduction, quality improvement, efficiency gains or promotion of reasonable operation to be attained by the implementation of the concerted actions.

### **Article 15**

Enterprises applying for an approval pursuant to Subparagraph 2, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. comparison between funds required in the research and development programs by the individual enterprises versus those required in a joint research and development program; and

2. concrete expected effects in technology upgrading, cost reduction, quality improvement or efficiency gains to be attained by the implementation of the concerted action.

## **Article 16**

Enterprises applying for an approval pursuant to Subparagraph 4, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. quantities and values of concerned goods exported by each participating enterprise in the most recent year and the percentage of such quantities and values to the total export quantities and values as well as the ratio between export and domestic sales of the concerned commodities; and
2. concrete expected effects in ensuring or promoting exports as a result of the implementation of the concerted action.

## **Article 17**

Enterprises applying for an approval pursuant to Subparagraph 5, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. quantities and values of the concerned goods imported by each participating enterprise in the three (3) most recent years;
2. comparison between costs required for import by the individual enterprises versus those required for joint import; and
3. concrete expected effects in strengthening trading capability resulting from the implementation of the concerted action.

## **Article 18**

Enterprises applying for an approval pursuant to Subparagraph 6, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. comparative information of average production costs and prices of the specific goods that the concerted action is applicable to;

2. data relating to the yearly capacity, equipment utilization rate, production/sales quantities (values), export/import quantities (values), inventory in respect of the concerned goods of each participating enterprise in the three (3) most recent years, as well as a monthly breakdown of such information in the most recent year; and
3. change of number of operators in the trade during the three (3) most recent years;
4. prospect of the market for the particular industry; and
5. self-help measures taken by participating enterprises in overcoming economic recession.

## **Article 19**

Enterprises applying for an approval pursuant to Subparagraph 7, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. documents showing eligibility to be considered as small and medium-sized enterprises; and
2. concrete expected effects to enhance operation efficiency or competitiveness as a result of the concerted action.

## **Article 20**

If the information submitted by enterprises applying for the approval of a concerted action is incomplete or inaccurate, the central competent authority may state reasons therefor and request the said enterprise to supplement or correct all of the information within a prescribed time limit or may otherwise dismiss the application if the required supplement or correction is not made in time.

The supplement or correction in the preceding paragraph may be submitted only once for each application.

## **Article 21**

The small and medium-sized enterprises mentioned in Subparagraph 7, Article 14 of the Law shall be determined in accordance with the Statute for Development of

Small and Medium-sized Enterprises.

## **Article 22**

Any enterprise applying for an extension pursuant to Paragraph 2, Article 15 of the Law shall submit the following documents:

1. form application;
2. copy of the original approval;
3. reasons for such extension; and
4. other documents or information required by the central competent authority.

When the application for extension is approved, the central competent authority shall state in its approval the reference number of the original approval and the effective period for registration and public announcement.

## **Article 23**

The following factors shall be taken into consideration when determining whether there is due cause as referred to in Subparagraph 2, Article 19 of the Law:

1. supply/demand situation of the relevant market;
2. difference in costs;
3. amount of the respective sales;
4. credit risks; and
5. other reasonable or justifiable causes.

## **Article 24**

The “restrictions” as used in Subparagraph 6, Article 19 of the Law refer to tie-in, exclusive dealing, territory, customer or utilization restrictions, and other restrictions restraining trading counterparts’ business operations.

In order to determine whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as intent, aim, market power of the parties, structure of the relevant market, nature of the goods and the effect on competition in the market resulting from implementation of such restrictions shall be considered.

## **Article 25**

In case of any violation by an enterprise of Paragraph 1 or 3, Article 21 of the Law, the central competent authority may order the enterprise to publish advertisements showing the correction notice in accordance with Article 41 of the Law.

Weighing the level of effect of the original advertisements, the central competent authority shall decide the methods, frequency and period of the advertisements mentioned in the preceding paragraph.

## **Article 26**

To make the notification prescribed in Subparagraph 1, Paragraph 1, Article 27 of the Law, a written notice shall be used.

The above written notice shall contain the following information:

1. name, location, residence or domicile of the notified party, and the name and location of the responsible person if the notified party is a company, firm, trade association or organization;
2. subject of the matter;
3. date, time and place of required presence; and
4. punishment for failure to make presence without proper reasons.

Except in cases of urgency, service of a written notice shall be made at least forty-eight (48) hours prior to the date of required presence.

## **Article 27**

The notified party referred to in the preceding Article may designate an agent to make statements. If it is deemed necessary, however, the central competent authority may order him to appear in person.

## **Article 28**

After the notified party has appeared and made his/her statements pursuant to Article 26, the central government authority shall have the statements transcribed and order him/her to sign on the transcripts thereof; provided that if he/she is unable to

sign, the statements may be affixed with a seal or be fingerprinted by the notified party after the reason therefore has been recorded. If the notified party refuses to sign, affix a seal or fingerprint the transcript, such facts shall be stated in the transcript.

## **Article 29**

Notification by the central government authority pursuant to Subparagraph 2, Paragraph 1, Article 27 of the Law shall be made in writing and contain the following information:

1. name, location, residence or domicile of the notified party, and the name and location of the responsible person if the notified party is a company, firm, trade association or organization;
2. subject of the matter;
3. account books, documents and other necessary information or evidence to be submitted;
4. time limit for the submission; and
5. punishment for failure to submit without proper reasons.

## **Article 30**

The central competent authority, upon receipt of account books, documents and other necessary information or evidence submitted by relevant agencies, organizations, enterprises or individuals, shall issue a receipt therefor.

## **Article 31**

In seeking approval for exemption of acts from being subject to the Law according to Paragraph 2, Article 46 of the Law, the governmental enterprise, public utility or communication and transportation enterprise shall submit, in writing, to the authority with jurisdiction over the business of the respective enterprises at the central government level, for reviewing and transferring to the Executive Yuan, the substance of such acts, the article(s) of the Law to be exempted and rationale therefor with relevant information and documents.

When transferring the application made pursuant to the preceding paragraph, the

authority with jurisdiction over the business of the respective enterprises at the central government level shall provide its preliminary opinion thereto.

If the application made in accordance with Paragraph 1 above is approved by the Executive Yuan, the authority with jurisdiction over the business of respective enterprises at the central government shall notify the central competent authority under the Law with a copy of notification to the applicant enterprise.

### **Article 32**

These Rules shall come into force on the date of promulgation.

## **Appendix VI**

# **IMPLEMENTING RULES TO THE FAIR TRADE LAW OF 1999**

*(formerly translated as Enforcement Rules of Fair Trade Law)*

*Promulgated on 24 June 1992; Amendments Promulgated on 30 August 1999*

### **Article 1**

These Implementing Rules are adopted pursuant to the provisions of Article 48 of the Fair Trade Law (hereinafter referred to as the “Law”).

### **Article 2**

The following factors shall be taken into consideration when determining whether an enterprise constitutes a monopoly as referred to in Article 5 of the Law:

1. the market share of the enterprise in a particular market;
2. the possibility of substitution of the goods or services in a particular market, giving regard to considerations of time and place;
3. the ability of the enterprise to influence prices in a particular market;
4. whether formidable difficulties exist, restricting other enterprises from entering a particular market; and
5. import and export status of the goods or services.

### **Article 3**

Absent any one of the circumstances set forth in the following subparagraphs, no enterprise shall be considered a monopoly as provided for in the preceding article:

1. the market share of an enterprise reaches one-half of a particular market;
2. the combined market share of two enterprises reaches two-thirds of a particular market; and
3. the combined market share of three enterprises reaches three-fourths of a particular market.

Even though there is one of the circumstances as set forth in the preceding paragraph, in case the market share of an individual enterprise does not reach one-tenth of the particular market or in case its total sales in the preceding fiscal year are less than one billion New Taiwan Dollars, such enterprise shall not be considered as a monopoly.

Despite the existence of the circumstances specified in the preceding two paragraphs, under which an enterprise shall not be considered as a monopoly, the central competent authority may nevertheless determine that such enterprise constitute a monopolistic enterprise where its establishment or its provision of goods or services to a particular market is subject to legal or technological restrictions or where other circumstances exist that would affect market supply and demand and might impede the ability of others to compete.

#### **Article 4**

Production, sales, inventory, and import/export value (volume) data for the enterprise and the particular market shall be taken into account when calculating the market share of an enterprise.

Data necessary for the calculation of the market share may be based on that obtained upon investigation by the central competent authority or that recorded by other government agencies.

#### **Article 5**

Concerted action under Article 7 of the Law is limited to a horizontal one among enterprises at the same stage of production and/or marketing, through which the market functions of production, trade in goods, or supply and demand of services are capable of being affected.

“Other form of mutual understanding” in Article 7 means communication of intent other than contract or agreement that, irrespective of whether any binding effect exists, could in fact lead to joint action.

Restricting activities of enterprises by a trade association through its charter, a resolution of a member meeting or a directors/supervisors meeting, or other means

shall also be considered as a horizontal concerted action as set out in the first paragraph of this article; the representative of such trade association may be deemed as the actor.

## **Article 6**

“Sales amount” in subparagraph 3, paragraph 1, Article 11 of the Law means the total sales amount of an enterprise.

Calculation of the “total sales amount” referred to in the preceding paragraph shall be based on data obtained through investigation by the central competent authority or recorded by other government agencies.

## **Article 7**

An application for approval of a merger of enterprises required by paragraph 1, Article 11 of the Law shall be filed with the competent central authority by the following enterprises:

1. all the enterprises participating in the merger, where two enterprises are merged into one, where an enterprise is assigned by or leases from another enterprise, or where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business;
2. the holding or acquiring enterprise, where an enterprise holds or acquires shares or capital contribution of another enterprise; and
3. the controlling enterprise, where an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.

## **Article 8**

An application for approval of a merger of enterprises required by paragraph 1, Article 11 of the Law shall be filed with the central competent authority with the following documents attached:

1. an application form specifying the following information:

- (1) the type and substance of the merger;
  - (2) personal name and residence or domicile of each participating enterprise, or the name of each participating company, sole proprietorship or partnership, or organization, and the location of office or place of business for each participating enterprise;
  - (3) the scheduled date of merger;
  - (4) the name of the agent, if any, and the supporting document there; and
  - (5) other necessary information;
2. basic data on each participating enterprise:
    - (1) the name and residence or domicile of the representative or administrator, if any, of each enterprise;
    - (2) the capital and scope of business of each participating enterprise;
    - (3) the turnover in the preceding fiscal year of each participating enterprise and any enterprise with which it has a relationship of control or subordination, and
    - (4) the number of employees of each participating enterprise.
  3. the financial statement and operating report for the preceding fiscal year of each participating enterprise;
  4. data such as the production or operating costs, sales prices, and production and sales values (volumes) of each enterprise's goods or services related to the merger applied for;
  5. an explanation of the benefits of the merger for the overall economy; and
  6. other documents as specified by the central competent authority.

The form of the application referred to in the preceding paragraph shall be set by the central competent authority.

## **Article 9**

Where the materials submitted with the application for approval of merger are incomplete or are deficient in content, the central competent authority may require supplementation or correction of the application within a specified period of time, stating the reasons for such requirement, and may dismiss the application for failure

to comply within the specified period.

Supplementation or correction referred to in the preceding paragraph is limited to one time.

The two-month period referred to in paragraph 2, Article 11 of the Law is calculated beginning from the date of receipt of the application by the central competent authority; provided, where the materials submitted by the enterprise or the information therein are incomplete or deficient in content and the central competent authority has notified the applicant to make supplementation or correction within a specified time, the period shall be calculated from the date of receipt of the supplementation or correction.

## **Article 10**

When approving a merger pursuant to Article 12 of the Law, the central competent authority may prescribe, for a reasonable duration, additional conditions or burdens to ensure that the benefits for the overall economy outweigh the disadvantages resulted from competition restraints.

The additional conditions or burdens made in accordance with the preceding paragraph may not contradict the purposes of the approval, and shall furthermore bear justifiable and reasonable relevance to such purposes.

## **Article 11**

When considered necessary, the central competent authority may publish approvals for mergers in the government gazette.

## **Article 12**

To conduct a concerted action pursuant to the proviso of Article 14 of the Law, an application for approval shall be jointly filed with the central competent authority by all the enterprises participating in such action.

An application for approval of a concerted action by a trade association as referred to in paragraph 3, Article 5 shall be filed with the central competent authority by such trade association.

The applications in the preceding two paragraphs may be made through an attorney-in-fact.

### **Article 13**

An application for approval filed pursuant to the proviso of Article 14 of the Law shall be accompanied by the following documents:

1. an application form that sets forth the following:
  - (1) the names of the goods or services to which the concerted action applies;
  - (2) the type of concerted action;
  - (3) the implementation period and area of the concerted action;
  - (4) the name of the attorney-in-fact, if there is one, and the supporting document;
  - (5) other necessary information;
2. the document showing the contract, agreement or other forms of communication of intent in the concerted action;
3. the concrete substance and implementation methods of the concerted action;
4. basic data on the participating enterprises:
  - (1) personal name and residence or domicile of each participating enterprise, or the name of each participating company, sole proprietorship or partnership, trade association, or organization, and the location of office or place of business for each participating enterprise;
  - (2) the name and residence or domicile of the representative or administrator, if any, of each enterprise; and
  - (3) the scope of business, capital, and turnover in the preceding fiscal year of each participating enterprise.
5. quarter reports for the past two years on the prices and production and sales values (volumes) of those products or services relevant to the concerted action, of each participating enterprise;
6. financial statement and operating report of each participating enterprise for the preceding fiscal year;
7. an assessment report on the concerted action; and

8. other documents as specified by the central competent authority.

The form of the application referred to in the preceding paragraph shall be set by the central competent authority.

## **Article 14**

The assessment report on the concerted action referred to in subparagraph 7, paragraph 1, of the preceding article shall specify the following:

1. cost structure before and after the concerted action and analytical data on forecasted changes;
2. the impact of the concerted action on non-participating enterprises;
3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;
4. the impact of the concerted action on upstream and downstream enterprises and their markets;
5. concrete benefits and detrimental effects of the concerted action to the overall economy and public interest; and
6. other necessary information.

## **Article 15**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 1 or 3, Article 14, of the Law shall set out in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, or rationalization of operations.

## **Article 16**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 2, Article 14, of the Law shall specify the following information:

1. the difference between the funding required for individual research and development and that required for joint research and development; and

2. the anticipated concrete results in technology upgrading, quality improvement, cost reduction, or increased efficiency.

### **Article 17**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 4, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent one-year period, the percentage of the total export value (volume) of the same product for which it accounts, and the enterprise's ratio of exports to domestic sales; and
2. the anticipated concrete results in promoting exports.

### **Article 18**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 5, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;
2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;
3. the anticipated concrete results in strengthening trade.

### **Article 19**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 6, Article 14, of the Law shall specify the following information:

1. a monthly comparative breakdown for the preceding three years of the average fixed costs, average variable costs, and pricing of specified goods of each participating enterprise;

2. a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels of each participating enterprise;
3. changes in the number of businesses in the relevant industry over the preceding three years;
4. market prospects for the relevant industry;
5. adopted or contemplated self-help methods, other than concerted action, to turn around the business; and
6. anticipated results of the concerted action.

In addition to those enumerated above, the central competent authority may request the provision of other related materials.

## **Article 20**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 7, Article 14, of the Law shall specify the following information:

1. supporting document showing that the enterprise conforms to the criteria for recognition as a small or medium-sized enterprise.
2. anticipated concrete results in achieving improved operational efficiency or strengthened competitiveness.

## **Article 21**

Where the materials submitted with the application for approval of concerted action are incomplete or are deficient in content, the central competent authority may require supplementation or correction of the application within a specified period of time, stating the reasons for such requirement, and may dismiss the application for failure to comply within the specified period.

Supplementation or correction referred to in the preceding paragraph is limited to one time.

## **Article 22**

The identification of a small or medium-sized business as referred to in subparagraph 7, Article 14, of the Law shall be made in accordance with the criteria set forth in the Statute for the Development of Small and Medium-Sized Enterprises.

## **Article 23**

To obtain an extension pursuant to paragraph 2, Article 15, of the Law the enterprises shall file an application with the central competent authority attaching the following materials:

1. an application form;
2. a copy of the original approval;
3. the reasons for applying for the extension; and
4. other documents or materials designated by the central competent authority.

## **Article 24**

The following factors shall be taken into consideration when determining whether a justification exists as referred to in subparagraph 2, Article 19, of the Law:

1. supply and demand conditions in the market;
2. cost differences;
3. transaction amounts;
4. credit risks; and
5. other reasonable grounds.

## **Article 25**

“Limiting” as used in subparagraph 6, Article 19 of the Law refers to tying arrangements, exclusive dealings, restrictions on territory, customers or use, and other restrictions on business activities.

In determining whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods, and the impact of carrying out such restrictions on market competition shall be

considered.

## **Article 26**

In cases where actions of an enterprise violate the provisions of paragraphs 1 or 3, Article 21 of the Law, the central competent authority may order the enterprise to publish corrective advertisements pursuant to Article 41 of the Law.

The methods, number of appearances, and duration of the advertisements shall be determined by the central competent authority, taking into consideration the degree of impact of the original advertisements.

## **Article 27**

“Participant” as used in paragraph 3, Article 23-1, and paragraph 2, Article 23-2 of the Law means the party to a contract that has been rescinded or terminated, and does not extend to other participants.

## **Article 28**

The central competent authority, when giving notice as prescribed in subparagraph 1, Paragraph 1, Article 27 of the Law, shall do so in writing.

The written notice in the preceding paragraph shall specify the following information:

1. name and residence or domicile of the recipient of the notice, or, if a company, sole proprietorship or partnership, trade association, or organization, the name of its responsible person and the address of its office or place of business;
2. subject matter of the case;
3. date, time, and place of required appearance; and
4. provisions concerning punishment for failure to appear without proper reason.

The notice shall be served no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.

## **Article 29**

A person notified pursuant to the preceding article may retain an attorney-in-fact to appear and make statements on his/her behalf; provided, when the central competent authority deems necessary, it may give notice requiring appearance in person.

## **Article 30**

Statements made by the person notified pursuant to the provisions of Article 28 shall be recorded into a written Statement, to be signed by the notified person. If the notified person is unable to sign the Statement, he or she may seal or fingerprint it instead; if the notified person refuses to sign, seal, or fingerprint the Statement, such facts shall be recorded.

## **Article 31**

When issuing notice pursuant to subparagraph 2, Paragraph 1, Article 27 of the Law, the central competent authority shall include the following items in writing:

1. the name and residence or domicile of the notified person, and in the case of a company, sole proprietorship or partnership, trade association or organization, the name of the responsible person and the location of the office or place of business;
2. the subject matter of the case;
3. books and records, documents, or other materials or evidence to be submitted;
4. the time limit for submission; and
5. provisions concerning punishment for refusal to submit without proper reason.

## **Article 32**

The central competent authority shall issue a receipt upon receiving books and records, documents, and other required materials and evidence submitted by relevant agencies, organizations, enterprises, or individuals.

### **Article 33**

When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:

1. motivation, purpose, and expected improper interests of the illegal acts;
2. the degree of the illegal act's damage to trading order;
3. the duration of the illegal act's damage to trading order;
4. interests derived on account of the illegal act;
5. scale, operating situation, and market position of the enterprise involved in the illegal act;
6. whether or not the type of illegal acts involved in the violation has been the subject of correction or warning by the central competent authority
7. types of, number of, and intervening time between, past violations, and;
8. remorse shown for the act and attitude of cooperation in the investigation.

### **Article 34**

The duration for which an enterprise is ordered to suspend business pursuant to the Law shall be limited to six months each time.

### **Article 35**

These Implementing Rules shall take effect from the date of announcement.



## **Appendix VII**

# **ENFORCEMENT RULES TO THE FAIR TRADE LAW OF 2002**

*(formerly translated as Implementing Rules to the Fair Trade Law)*

*Promulgated on 24 June 1992*

*by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 015*

*Amendments Promulgated on 30 August 1999*

*by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 02420*

*Amendments Promulgated on 19 June 2002*

*by Fair Trade Commission Order Kung Mi Fa Tzu No. 0910005518*

### **Article 1**

These Enforcement Rules are adopted pursuant to the provisions of Article 48 of the Fair Trade Law (hereinafter referred to as the “Law”).

### **Article 2**

The term “trade association” in Article 2, Subparagraph 3 of the Law refers to the following:

1. Industry associations and chambers of industry organized under the Industrial Association Law;
2. Commercial associations, federations of commercial associations, exporter associations, and federations of exporter associations, and chambers of commerce organized under the Commercial Association Law;
3. Other professional associations organized under the provisions of other laws and regulations.

### **Article 3**

The following factors shall be taken into consideration when determining whether an enterprise constitutes a monopoly as referred to in Article 5 of the Law:

1. the market share of the enterprise in a particular market;
2. the possibility of substitution of the goods or services amidst changes in a particular market, giving regard to considerations of time and place;
3. the ability of the enterprise to influence prices in a particular market;
4. whether formidable difficulties exist to entry to a particular market by other enterprises;
5. import and export status of the goods or services.

### **Article 4**

Production, sales, inventory, and import/export value (volume) data for the enterprise and the particular market shall be taken into account when calculating the market share of an enterprise.

Data necessary for the calculation of the market share may be based on that obtained upon investigation by the central competent authority or that recorded by other government agencies.

### **Article 5**

The responsible person of a trade association may be deemed as the actor in concerted action as under Article 7 of the Law.

### **Article 6**

“Sales amount” in Subparagraph 3, Paragraph 1, Article 11 of the Law means the total sale or operating revenue of an enterprise.

Calculation of the total sale or operating revenue referred to in the preceding paragraph may be based on data obtained through investigation by the Central Competent Authority or recorded by other government agencies.

## **Article 7**

A report of a merger of enterprises under Article 11, Paragraph 1 of the Law shall be filed with the Competent Central Authority by the following enterprises:

1. the enterprises in the merger, where an enterprise is merged into another, assigned by or leases from another enterprise(s) of the operations or assets of another, regularly runs operation jointly with another, or is commissioned by another enterprise to run operation;
2. the holding or acquiring enterprise, where an enterprise holds or acquires shares or capital contribution of another enterprise; and
3. the controlling enterprise, where an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.

If an enterprise required to file a report has not yet been established, the existing enterprises in the merger shall file the report(s).

## **Article 8**

A report of a merger of enterprises under Paragraph 1, Article 11 of the Law shall be filed with the Central Competent Authority with the following documents attached:

1. a report form specifying the following information:
  - (1) type and substance of the merger;
  - (2) the name and the place of office of each participating enterprise, or the name and the place of the office or business of each participating company, sole proprietorship, partnership, or association ;
  - (3) the scheduled date of merger;
  - (4) the name of the attorney-in-fact, if any, and the supporting document therefor,
  - (5) other required information;
2. basic data on each participating enterprise:
  - (1) the name and residence or domicile of the responsible person or administrator, if any, of each enterprise;

- (2) the capital and business items of each participating enterprise;
  - (3) the turnover in the preceding fiscal year of each participating enterprise and any enterprise with which it has a relationship of control or subordination;
  - (4) the number of employees of each participating enterprise.
  - (5) Certificates of incorporation or establishment of each participating enterprise.
3. the financial statement and operating report for the preceding fiscal year of each participating enterprise;
  4. data such as the production or operating costs, sales prices, and production and sales values (volumes) of the participating enterprises' goods or services related to the combination applied for;
  5. an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition;
  6. major future operating plans of the participating enterprises;
  7. overview of the long-term investments by the participating enterprises in other enterprises;
  8. if a participating enterprise's stock is listed on the stock exchange or traded on over-the-counter markets, the most recent prospectus or annual report;
  9. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;
  10. other documents as specified by the Central Competent Authority.

The form of the report referred to in the preceding paragraph shall be prescribed by the Central Competent Authority.

## **Article 9**

Where the materials submitted with the merger report pursuant to Paragraph 1, Article 11 fail to comply with the requirements of the preceding article or are deficient in content, the Central Competent Authority may issue notice to require supplementation or correction within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within

the specified time period or is so made but the submitted materials remain deficient, the filing will not be accepted.

## **Article 10**

The term “financial enterprises” as used in Article 11, Paragraph 2 of the Law refers to financial institutions under Article 4 of the Financial Institution Merger Law and financial holding companies under Article 4 of the Financial Holding Company Law.

## **Article 11**

The date accepting the complete filing of report materials referred to in Paragraph 3, Article 11 of the Law means the filing date on which the report materials filed with the Central Competent Authority are in conformity with Article 8 and the contents thereof are also complete.

## **Article 12**

The Central Competent Authority may publish in the government gazette its decisions made on the filings of mergers pursuant to Article 11, Paragraph 4 of the Law.

## **Article 13**

An application for approval of concerted action filed pursuant to the proviso of Article 14, Paragraph 1 of the Law shall be jointly filed with the Central Competent Authority by all the enterprises participating in such action.

An application for approval of concerted action by a trade association as referred to in Article 7, Paragraph 4 of the Law shall be filed with the Central Competent Authority by the trade association.

The applications in the preceding two paragraphs may be made through an agent.

## **Article 14**

An application for approval pursuant to the proviso of Article 14, Paragraph 1 of the Law shall be accompanied by the following documents:

1. an application form that sets forth the following:
  - (1) the names of the goods or services to which the concerted action applies;
  - (2) the type of concerted action;
  - (3) the implementation period and area of the concerted action;
  - (4) the name of the attorney-in-fact, if any, and the supporting document therefor;
  - (5) other required information;
2. the contract, agreement or other document evidencing agreement to the concerted action;
3. the concrete substance and implementation methods of the concerted action;
4. basic data on the participating enterprises:
  - (1) the name and residence or domicile of each participating enterprise, or the name and the location of the office or place of business of each participating company, sole proprietorship, partnership, or association;
  - (2) the name and residence or domicile of the representative or administrator, if any, of each enterprise; and
  - (3) the business items, capital, and turnover in the preceding fiscal year of each participating enterprise.
5. quarterly reports for the past two years on the prices and production and sales values (volumes) of those products or services relevant to the concerted action, of each participating enterprise;
6. financial statement and operating report of each participating enterprise for the preceding fiscal year;
7. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;
8. an assessment report on the concerted action; and
9. other documents as specified by the Central Competent Authority.

The form of the application referred to in the preceding paragraph shall be set by the Central Competent Authority.

## **Article 15**

The assessment report on the concerted action referred to in Subparagraph 8, Paragraph 1, of the preceding article shall specify the following:

1. cost structure before and after the concerted action and analytical data on forecasted changes;
2. the impact of the concerted action on enterprises not participating;
3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;
4. the impact of the concerted action on upstream and downstream enterprises and their markets;
5. concrete benefits and detrimental effects of the concerted action for the overall economy and public interest;
6. other required information.

## **Article 16**

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 1 or 3, Paragraph 1, Article 14, of the Law shall include a concerted action assessment report that sets out in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, or rationalization of operations.

## **Article 17**

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 2, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the difference between the funding required for individual research and development and that required for joint research and development;
2. the anticipated concrete results in technology upgrading, quality improvement, cost reduction, or increased efficiency.

## **Article 18**

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 4, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent one-year period, the percentage of the total export value (volume) of the same product for which it accounts, and the enterprise's ratio of exports to domestic sales; and
2. the anticipated concrete efficacy in promoting exports.

### **Article 19**

The concerted action assessment report accompanying an application filed pursuant to the provisions of Subparagraph 5, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;
2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;
3. the anticipated concrete results in strengthening trade.

### **Article 20**

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 6, Paragraph 1, Article 14, of the Law shall specify the following information:

1. a monthly comparative breakdown for the preceding three years of the average fixed costs, average variable costs, and pricing of specified goods of each participating enterprise;
2. a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels of each participating enterprise;

3. changes in the number of businesses in the relevant industry over the preceding three years;
4. market prospects for the relevant industry;
5. adopted or contemplated self-help methods, other than concerted action, to turn around the business; and
6. anticipated results of the concerted action.

In addition to that enumerated above, the Central Competent Authority may request the provision of other related materials.

## **Article 21**

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 7, Paragraph 1, Article 14, of the Law shall specify the following information:

1. materials to show meeting the criteria to be recognized as a small or medium-sized enterprise.
2. anticipated concrete results in achieving improved operational efficiency or strengthened competitiveness.

## **Article 22**

A small or medium-sized business as referred to in Subparagraph 7, Paragraph 1, Article 14, of the Law shall be determined in accordance with the criteria set forth in the Statute for the Development of Small and Medium-Sized Enterprises.

## **Article 23**

Where an enterprise applying for approval of concerted action pursuant to Paragraph 1, Article 14 submits materials that are incomplete or are deficient in content, the Central Competent Authority may issue notice to require supplementation or correction of the application within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within the specified time period or is so made but the submitted materials remain deficient, the application will be rejected.

Supplementation or correction referred to in the preceding paragraph may be made only once.

## **Article 24**

The three-month period specified in Article 14, Paragraph 2 of the Law shall be calculated from the day next to the date on which the Central Competent Authority receives the application. However, where the materials submitted by the enterprise are incomplete or deficient in content and the Central Competent Authority has issued a notice to require supplementation or correction within a specified time, the period shall be calculated from the day next to the date of receipt of the supplementation or correction.

## **Article 25**

To apply for an extension pursuant to Paragraph 2, Article 15, of the Law, the enterprises shall prepare the following materials to file with the Central Competent:

1. an application form;
2. a copy of the original approval;
3. the reasons for applying for the extension; and
4. other documents or materials designated by the Central Competent Authority.

When the Central Competent Authority approves an extension, it shall record the original approval number and period along with the extension and publish them in the government gazette.

## **Article 26**

The following factors shall be taken into consideration when determining whether just cause exists as referred to in Subparagraph 2, Article 19, of the Law:

1. supply and demand conditions in the market;
2. cost differences;
3. transaction amounts;
4. credit risks; and
5. other reasonable grounds.

## **Article 27**

“Restrictions” as used in Subparagraph 6, Article 19, of the Law refers to the circumstances under which an enterprise engages in restrictive activity in regards to tie-ins, exclusive dealing, territory, customers, use, or otherwise.

In determining whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods, and the impact that carrying out such restrictions would have on market competition shall be considered.

## **Article 28**

In cases where actions of an enterprise violate the provisions of Paragraphs 1 or 3, Article 21, of the Law, the Central Competent Authority may order the enterprise to publish corrective advertisements pursuant to the provisions of Article 41 of the Law.

The methods, number of appearances, and duration of the advertisements referred to in the preceding paragraph shall be determined by the Central Competent Authority, taking into consideration the degree of impact of the original advertisements.

## **Article 29**

“Participant” as used in Paragraph 3, Article 23bis, and Paragraph 2, Article 23ter, of the Law means the party to a contract that has been rescinded or terminated, and does not extend to other participants.

### **Article 30**

The Central Competent Authority may refuse to process complaints that lack substantive content or have no genuine name or address affixed thereto.

### **Article 31**

The Central Competent Authority, when giving notice as prescribed in Subparagraph 1, Paragraph 1, Article 27 of the Law, shall do so in writing.

The written notice in the preceding paragraph shall specify the following information:

1. name and residence or domicile of the recipient of the notice; if a company, sole proprietorship or partnership, trade association, or organization, the name of its responsible person and the address of its office or place of business;
2. the matter to be investigated and the explanations or materials that the notified party is required to provide with respect to such matter;
3. date, time, and place of required appearance;
4. provisions concerning punishment for failure to appear without proper reason.

The notice shall be served no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.

### **Article 32**

A person notified pursuant to the preceding article may retain an attorney-in-fact to appear and make statements on his or her behalf, provided that when the Central Competent Authority deems necessary, it may give notice requiring appearance in person.

### **Article 33**

After a person notified pursuant to the provisions of Article 31 has appeared and made a statement, the Central Competent Authority shall produce a written record of the statement, to be signed by the notified person. If the notified person is unable to

sign the record of statement, he or she may seal or fingerprint it instead; if the notified person refuses to sign, seal, or fingerprint the record of statement, such facts shall be recorded.

### **Article 34**

When issuing notice pursuant to Subparagraph 2, Paragraph 1, Article 27 of the Law, the Central Competent Authority shall include the following items in writing:

1. the name and residence or domicile of the notified person; if a company, sole proprietorship or partnership, trade association or organization, the name of the responsible person and the location of the office or place of business;
2. the matter to be investigated;
3. the explanations, books and records, documents, and other materials or evidence required to be submitted by the notified party;
4. the time limit for submission;
5. provisions concerning punishment for refusal to submit without justification.

### **Article 35**

After the Central Competent Authority has received books and records, documents, and any other required materials or evidence provided by relevant agencies, associations, enterprises, or individuals, the Central Competent Authority shall issue a receipt at the request of the provider.

### **Article 36**

When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:

1. motivation, purpose, and expected improper benefit of the acts;
2. the degree of the act's harm to market order;
3. the duration of the act's harm to market order;
4. benefits derived on account of the unlawful act;
5. scale, operating condition, and market position of the enterprise;

6. whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority;
7. types of, number of, and intervening time between past violations, and the punishment for such violations; and
8. remorse shown for the act and attitude of cooperation in the investigation.

### **Article 37**

These Enforcement Rules shall take effect from the date of promulation.

## **Appendix VIII**

# **SUPERVISORY REGULATIONS OF MULTI-LEVEL SALES OF 1992**

*Promulgated on February 28, 1992  
by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001*

### **Article 1**

These Regulations are enacted pursuant to Paragraph 2, Article 23 of the Fair Trade Law.

### **Article 2**

The provisions of these Regulations shall apply to the control of multi-level sales.

The term “multi-level sales enterprise” as referred to in these Regulations shall mean an enterprise which makes its operational projects or its rules, and plans its overall sales activities in respect of multi-level sales.

The term “participant” as referred to in these Regulations, shall mean a person who takes part in the organization or plan of a multi-level sales enterprise and sells or promotes the sale of commodities or services, and introduces other persons to join the aforesaid activities.

### **Article 3**

Prior to commencing its business or operation, a multi-level sales enterprise shall file a written report setting forth the following particulars for recordation with the central competent authority:

1. sales organization or plan;
2. operation project or guidelines, providing, among others, the calculation formula of participants' commissions, grants and other economic gains;
3. the commencement date of business or operation;

4. principal office;
5. terms and conditions providing rights and obligations of participants and general conditions of sales; and
6. provisions regarding warranties with respect to the commodities or services to be sold.

In the event of any change in the contents of the aforesaid report, the enterprise shall file another report for such change with the authority prior to the implementation thereof.

Any multi-level sales enterprise which commences its business or operation of multi-level sales before the promulgation of these Regulations shall file the aforesaid report for recording within two (2) months after the promulgation of these Regulations.

If deemed necessary, the central competent authority may notify a multi-level sales enterprise to supplement the report as filed in accordance with the first paragraph within a specified time limit.

#### **Article 4**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars with no false, concealed, or misleading statements:

1. capital amount;
2. sales organization or plan;
3. operation rules and trading guide;
4. obligations and liabilities of a participant;
5. contents of gains paid to a participant for directly selling or promoting the sales of commodities or services, and, if a participant may be paid gains for selling or promoting the sales of commodities or services by another participant who is introduced to join the plan or organization by the former participant, the contents and conditions of such gains;
6. particulars in connection with the types, functions, qualities, and usage of commodities or services;

7. terms, conditions and limitation of the obligations for warranties in commodities or services;
8. terms and conditions of withdrawal of a participant from an organization or plan, and rights and obligations arising out of the withdrawal; and
9. other particulars as designated by the central competent authority.

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall enter into a written participating contract with the participant, incorporating the provisions as prescribed in Items 2 through 9 of the first paragraph of this Article.

To evidence the performance of the non-disclosure duty of the first paragraph, the multi-level sales enterprise shall keep a statement signed by each participant or other types of proof documenting such disclosure.

The provisions as prescribed in paragraphs 1 and 3 of this Article shall apply to a participant introducing a third person to participate.

## **Article 5**

The contents of Item 8, Paragraph 1 of the preceding Article shall include the following particulars:

1. a participant may give written notice to a multi-level sales enterprise to rescind a contract within fourteen (14) days after the execution of the contract.
2. within thirty (30) days after the cancellation of the contract becomes effective, the multi-level sales enterprise shall, upon the participant's request, retrieve or accept the participant's delivery of the commodities, and return the purchase price at the time of cancellation of the contract and other expenses paid by the participant at the time of participation.
3. in returning the payments made by the participant under Paragraph 2 of this Article, the multi-level sales enterprise may deduct the value of the commodities destroyed or extinguished due to reasons attributable to the participant and the grant and/or the amount paid to the participant for such

dealing, as well as the shipping cost if the enterprise retrieves the commodities.

4. after expiration of the period for entitlement to rescind a contract as set forth in Paragraph 1 of this Article, the participant may terminate the contract in writing and withdraw from the multi-level sales plan or organization at any time.
5. after termination of a contract, the multi-level sales enterprise shall buy back commodities possessed by the participant concerned at the price of ninety percent (90%) of the original purchase price paid by the participant, provided that the enterprise may deduct the amount paid to the participant for such dealing and the diminished value of the commodities if the value of the retrieved commodities is diminished.
6. if the participant exercises his/her rights to cancel or terminate a contract under Paragraph 1 or 4, the multi-level sales enterprise shall not claim from the participant any breach penalty or compensation for damages suffered by the enterprise in connection with the cancellation or termination of the contract.

## **Article 6**

A multi-level sales enterprise shall prepare and keep, in its principal office, written information about monthly records of the development of the enterprise within the territory of the Republic of the China for examination by the central competent authority, including the overall organizational system of the enterprise and the organizational system of each of its levels, the number of participants, categories of commodities and services sold or dealt, quantities, commissions, grants or other economic gains and principal distribution areas.

The aforesaid records shall be kept for five years.

The written information may be restored by electronic data media if the central competent authority so agrees.

The central competent authority may dispatch officials to check the written information from time to time, which the enterprise shall not impede, refuse or evade.

## **Article 7**

A multi-level sales enterprise shall not conduct any of the following activities:

1. require a participant to pay any fee exceeding the cost in the name of training, seminars, social activities or meetings, or in any others.
2. require a participant to pay or undertake any security deposit, breach penalty, or other responsibilities which are obviously inappropriate.
3. require a participant to purchase commodities in a quantity which are clearly impossible to be sold out in a short period by an average person, unless it is set forth in a contract that the price shall be paid after the commodities are sold.
4. withhold gains payable to a participant after the participant withdraws from the enterprise in accordance with the relevant regulations.
5. set forth in a contract that a participant shall be given more gains only after the participant pays a massive amount of training fees or other costs; and
6. require, in other improper manners, a participant to undertake any responsibility which is clearly unfair. The above-listed provisions of this Article shall apply *mutatis mutandis* to a participant introducing a third person to participate.

## **Article 8**

These Regulations shall come into force as of the date of promulgation.



## **Appendix IX**

# **SUPERVISORY REGULATIONS GOVERNING MULTI-LEVEL SALES OF 1999**

*(formerly translated as Supervisory Regulations of Multi-Level Sales)*

*Promulgated on February 28, 1992*

*by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001*

*Amendments Promulgated on June 16, 1999*

*by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 01588*

## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 1**

These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Law.

### **Article 2**

The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise's filing for record, inspection of activities, notices to participants, and the content of participation agreements as well as the protection of participants' interests.

### **Article 3**

The term "multi-level sales enterprise" as used in these Regulations means an enterprise that makes its operational plans or rules and designs its overall sales activities in respect of multi-level sales.

## **Article 4**

The term “participant” as used in these Regulations means the following:

1. a person who takes part in the organization or plans of a multi-level sales enterprise and promotes or sells goods or services, and may introduce other persons to participate;
2. a person having an agreement with a multi-level sales enterprise, under which it will obtain the right to promote or sell goods or services and introduce other persons to participate after cumulatively paying a certain consideration.

## **CHAPTER TWO PROCEDURES OF REPORT FILING FOR RECORD**

## **Article 5**

Thirty days prior to commencing multi-level sales activities, a multi-level sales enterprise shall file a written report that accurately sets forth the following particulars for recording by the central competent authority:

1. photocopies of the company license and the profit-seeking enterprise registration;
2. locations of the principal place of business and other places of business;
3. names and locations of related enterprises and their shareholding relationship with the multi-level sales enterprise;
4. sales organization or plan;
5. operational plans or rules, specifying, among other things, the methods of calculating the participants’ commissions, bonuses, and other economic benefits; a forecast of the highest possible share of gross operating revenues that could be constituted by the total amount of such commissions, bonuses, and other economic benefits;
6. the date of commencement of multi-level sales activities;
7. contract clauses and other agreements governing the rights and obligations of participants;

8. types, functions, qualities, prices, and uses of the goods to be sold or services to be provided, the forecasted unit cost of manufacturing, material or labor of the goods or services, and related matters;
9. provisions regarding warranties with respect to defects of the goods to be sold or services to be provided; and
10. other matters specified by the central competent authority.

The format of the “written report” referred to in the preceding paragraph may be prescribed by the central competent authority.

## **Article 6**

If a multi-level sales enterprise fails to fully file all materials in accordance with the provisions of paragraph 1 of the preceding article, the central competent authority may order it to make necessary corrections and supplements.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

The multi-level sales enterprise shall perform the corrections or supplementation referred to in the preceding two paragraphs within the time period prescribed by the central competent authority.

## **Article 7**

With the exception of changes to the unit cost of manufacturing, material or labor of the goods or services in item 8, paragraph 1 of Article 5, any change to the content of the report filed by a multi-level sales enterprise shall be reported prior to implementation. However, report on changes with respect to items 1 and 3, paragraph 1 of Article 5 may be filed within 15 days after the change.

A multi-level sales enterprise shall report each June its unit cost of manufacturing, material or labor of the goods or services it sold in the preceding year.

## **Article 8**

A multi-level sales enterprise that ceases multi-level sales activities shall file a

report with the central competent authority, post public notices at all its places of business, and notify its participants, thirty days prior to cessation.

### **Article 9**

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority. The publication referred to in the preceding paragraph may take the form of publication in the central competent authority's gazette or on its Internet site, or other forms sufficient to make the information widely known to the public.

### **Article 10**

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

## **CHAPTER THREE RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

### **Article 11**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no false, dissembling, or misleading presentations:

1. capitalization and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;
2. multi-level sales organization or plan;

3. operational rules, transaction guidelines, and laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. contents of benefits a participant may obtain by directly promoting or selling goods or services; contents of benefits a participant may obtain when a person he/she introduced to take part in the plan or organization promotes or sells goods or services, and the conditions for obtaining such benefits;
6. types, functions, qualities, prices, and uses of the goods or services, and other matters related thereto;
7. conditions, terms, and scope of warranties against defects of the goods or services;
8. conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal; and
9. other matters specified by the central competent authority.

The provisions of the preceding paragraph shall also apply when a participant introduces another person to take part in the organization or plan.

## **Article 12**

A multi-level sales enterprise shall enter into a written participation contract with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 9 of paragraph 1 of the preceding article.

## **Article 13**

The content as specified in item 8, paragraph 1 of Article 11 shall include, subject to other stipulations more favorable to the participant, the following:

1. the participant may rescind the participation contract by giving the multi-level sales enterprise written notice within fourteen days of signing the contract;
2. within a period of thirty days after the rescission of the contract by the participant becomes effective, the multi-level sales enterprise shall, upon request by the participant, retrieve or accept delivery by the participant of the

goods; it shall furthermore refund the purchase price of all the goods owned by the participant at the time of rescission as well as other consideration paid at the time the participant joined;

3. when returning the consideration paid by a participant pursuant to the provisions of the preceding item, a multi-level sales enterprise may deduct the value of the damage to, or the loss of, the goods where such damage or loss is attributable to the participant, and may deduct any bonus or remuneration already paid to the participant for the purchase of such goods. If the goods referred to in the preceding item are retrieved by the enterprise, the enterprise may deduct necessary costs of transportation for such retrieval;
4. after the rescission period referred to in the first item has expired, the participant may still terminate the contract in writing and withdraw from the multi-level sales plan or organization at any time;
5. within thirty days following the termination of the contract pursuant to the preceding item, the multi-level sales enterprise shall buy back all goods in the participant's possession at 90% of the original purchase price; provided, bonuses or remuneration paid to participants on account of such goods, as well as decreases in the value of the goods, may be deducted; and
6. if a participant exercises rights to rescind or terminate the contract pursuant to the provisions of items 1 and 4, the multi-level sales enterprise may not claim from the participant any damage or penalty for breach of contract in connection with such rescission or termination.

The provisions of items 2 and 5 of the preceding paragraph shall not affect the rights the participant is entitled to exercise pursuant to the relevant provisions of the Civil Code.

The provisions of the two preceding paragraphs concerning goods shall apply *mutatis mutandis* to services.

## **Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of

operational rules or plans by such participant, or other reasons attributable to such participant shall be specified in the contract.

## **Article 15**

Beginning June 1, 2000, a multi-level sales enterprise shall prepare and keep in its principal place of business the following audited accounting statements for the previous accounting year, certified by a Certified Public Accountant:

1. operating reports;
2. balance sheets;
3. inventory of property, and
4. income statement.

A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commission, bonus, or other economic benefit during the preceding year, may inspect the audited statements, as specified in the preceding paragraph, of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding two paragraphs for two months after it ceases multi-level sales activities.

## **Article 16**

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor's statutory agent, and shall furthermore attach it to the participation contract.

# **CHAPTER FOUR SALES ACTIVITIES**

## **Article 17**

A multi-level sales enterprise may not engage in any of the following activities:

1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;
2. requiring a participant to pay or undertake any security deposit, breach penalty, or other liability, where such is obviously unreasonable;
3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;
4. unjustifiably withholding commission, bonus, or other economic benefit payable to a participant after rescission or termination of the contract;
5. stipulating that a participant shall be paid greater benefits only after he pays training fees obviously incommensurate with the cost or pays other obviously unjustifiable consideration;
6. giving specific persons preferential treatment in a manner contrary to the multi-level sales organization or plan, such that the commission, bonus, or other economic benefits that should be available to other participants would be diminished;
7. improperly hindering a participant from returning goods arising from rescinding the contract or terminating the contract; and
8. requiring a participant to undertake obviously unfair obligations.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to participants.

## **Article 18**

For purposes of regulating the activities of its participants in respect of multi-level sales, a multi-level sales enterprise shall stipulate that the following are breaches of contract by the participant, and shall prescribe methods for handling such breaches and faithfully enforce them:

1. promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means;

2. raising funds from other persons in the name of the multi-level sales enterprise or through its organization;
3. engaging in sales activities by means that run counter to public order or good morals;
4. affecting the market trading order or creating heavy losses to consumers by improper direct sales calls; and
5. engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.

## **Article 19**

When recruiting participants by advertising or other means of communication to the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of recruiting employees or on other pretenses.

The provisions of the preceding paragraph shall also apply to participants.

## **Article 20**

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

The preceding paragraph shall apply *mutatis mutandis* to assertions of the items in paragraph 1 of Article 11.

## **Article 21**

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints about infractions of law by enterprises.

## **CHAPTER FIVE INSPECTION OF BUSINESS**

### **Article 22**

A multi-level sales enterprise shall prepare and keep in its principal place of business the following written materials, and record therein on a monthly basis its development within the territory of the Republic of China:

1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant's name or appellation, citizen's ID card number or number appeared on the business license, address, and contact telephone number; and the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commission, bonus, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

### **Article 23**

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade such inspection or order.

## **CHAPTER SIX SUPPLEMENTARY PROVISIONS**

### **Article 24**

These Regulations shall apply to foreign enterprises that engage in multi-level sales activities within the territory of the Republic of China; a participant or any third party who introduces a sales plan or operational rules of such enterprise introduced from abroad shall also be governed by the provisions of these Regulations pertaining to enterprises.

### **Article 25**

A multi-level sales enterprise that has already filed its written report before these amended Regulations take effect shall file its report of the particulars in items 2, 3, and 5, paragraph 1 of Article 5 and of amendments to the particulars in item 7, paragraph 1, Article 5 within two months after the amendments to these Regulations take effect.

### **Article 26**

These Regulations shall be effective from the date of promulgation.

The amendments to these Regulations shall be effective from July 1, 1999.



## **Appendix X**

# **SUPERVISORY REGULATIONS GOVERNING MULTI-LEVEL SALES OF 2002**

*Promulgated on February 28, 1992  
by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001  
Amendments Promulgated on June 16, 1999  
by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 01588  
Amendments Promulgated on April 24, 2002  
by Fair Trade Commission Order Kung Mi Fa Tzu No. 0910003680*

## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 1**

These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Law.

### **Article 2**

The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise' filing for record, inspection of activities, required CPA certification of and public disclosure of financial statements, matters requiring notice to participants, the content of participation agreements, the protection of participants' interests, conduct prohibited as materially affecting the interests of participants, and managerial obligations toward participants.

### **Article 3**

(Deleted)

### **Article 4**

(Deleted)

## **CHAPTER TWO PROCEDURES OF REPORT FILING FOR RECORD**

### **Article 5**

Thirty days prior to commencing multi-level sales activities, a multi-level sales enterprise shall file a written report that accurately sets forth the following particulars for recording by the central competent authority:

1. company name, paid-in capital, responsible person, place of office, date of incorporation registration, and a photocopy of the profit-seeking business registration;
2. locations of the principal place of business and other places of business;
3. names and locations of related enterprises and their shareholding relationship with the multi-level sales enterprise;
4. sales organization or plan;
5. operational plans or rules, specifying, among other things, the methods of calculating participants' commissions, bonuses, and other economic benefits; a forecast of the highest possible share of gross operating revenues that could be constituted by the total amount of such commissions, bonuses, and other economic benefits;
6. the date of commencement of multi-level sales activities;
7. contract clauses and other agreements governing the rights and obligations of participants;
8. types, functions, qualities, prices, and uses of the goods to be sold or services to be provided, the forecasted unit cost of manufacturing, material or labor of the goods or services, and related matters;
9. provisions regarding warranties with respect to defects of the goods to be sold or services to be provided;
10. other matters specified by the central competent authority.

The format of the "written report" referred to in the preceding paragraph may be prescribed by the central competent authority.

## **Article 6**

If a multi-level sales enterprise fails to fully file all materials in accordance with the provisions of paragraph one of the preceding article, the central competent authority may order it to make necessary corrections and supplement.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

The multi-level sales enterprise shall perform the corrections or supplementation referred to in the preceding two paragraphs within the time period prescribed by the central competent authority.

## **Article 7**

With the exception of changes to the unit cost of manufacturing, material or labor of the goods or services in item 8, paragraph 1 of Article 5, any change to the content of the report filed by a multi-level sales enterprise shall be reported prior to implementation. However, report on changes with respect to items 1 and 3, paragraph 1 of Article 5 may be filed within 15 days after the change.

A multi-level sales enterprise shall report each June its unit cost of manufacturing, material or labor of the goods or services it sold in the preceding year.

## **Article 8**

A multi-level sales enterprise that ceases multi-level sales activities shall file a report with the central competent authority, post public notices at all its places of business, and notify its participants, thirty days prior to cessation.

## **Article 9**

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority.

The publication referred to in the preceding paragraph may take the form of

publication in the central competent authority's gazette or on its Internet site, or other forms sufficient to make the information widely known to the public.

### **Article 10**

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

## **CHAPTER THREE RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

### **Article 11**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no false, dissembling, or misleading presentations:

1. capitalization and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;
2. multi-level sales organization or plan;
3. operational rules, transaction guidelines, and laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. contents of benefits a participant may obtain by directly promoting or selling goods or services; contents of benefits a participant may obtain when a person he/she introduced to take part in the plan or organization promotes or sells goods or services, and the conditions for obtaining such benefits;
6. types, functions, qualities, prices, and uses of the goods or services, and other matters related thereto;
7. conditions, terms, and scope of warranties against defects of the goods or services;

8. conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal; and
9. other matters specified by the central competent authority.

The provisions of the preceding paragraph shall also apply when a participant introduces another person to take part in the organization or plan.

## **Article 12**

A multi-level sales enterprise shall enter into a participation contract in writings with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 9 of paragraph 1 of the preceding article.

The writings referred to in the preceding paragraph may not be in the form of an electronic document.

## **Article 13**

The content as specified in item 8, paragraph 1 of Article 11 shall include, subject to other stipulations more favorable to a participant, the following:

1. a participant may rescind the participation contract by giving the multi-level sales enterprise written notice within fourteen days of signing the contract;
2. within a period of thirty days after the rescission of the contract by a participant becomes effective, the multi-level sales enterprise shall, upon request by the participant, retrieve or accept delivery by the participant of the goods; it shall furthermore refund the purchase price of all the goods owned by the participant at the time of rescission as well as other consideration paid at the time the participant joined;
3. when returning the consideration paid by a participant pursuant to the provisions of the preceding item, a multi-level sales enterprise may deduct the value of the damage to, or the loss of, the goods where such damage or loss is attributable to the participant, and may deduct any bonus or remuneration already paid to the participant for the purchase of such goods. If the goods referred to in the preceding item are retrieved by the enterprise, the enterprise may deduct necessary costs of transportation for such retrieval;

4. after the rescission period referred to in the first item has expired, a participant may still terminate the contract in writing and withdraw from the multi-level sales plan or organization at any time;
5. within thirty days following the termination of the contract pursuant to the preceding item, the multi-level sales enterprise shall buy back all goods in the participant's possession at 90% of the participant's original purchase price; provided that deduction may be any bonuses or remuneration already paid to the participant on account of such goods and any decreases in the value of the goods;
6. if a participant exercises rights to rescind or terminate the contract pursuant to the provisions of items 1 and 4, the multi-level sales enterprise may not claim from the participant any damage or penalty for breach of contract in connection with such rescission or termination.

The provisions of items 2 and 5 of the preceding paragraph shall not affect the rights the participant is entitled to exercise pursuant to the relevant provisions of the Civil Code.

The provisions of the two preceding paragraphs concerning goods shall apply *mutatis mutandis* to services.

## **Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of operational rules or plans by such participant or other reasons attributable to such participant shall be specified in the contract.

## **Article 15**

A multi-level sales enterprise shall prepare and keep in its main office the following audited accounting statements for the previous accounting year certified by a Certified Public Accountant:

1. operating reports;
2. balance sheets;
3. inventory of property;

4. income statement.

A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commission, bonus, or other economic benefit during the preceding year, may inspect the audited statements as specified in the preceding paragraph of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding two paragraphs for two months after it ceases multi-level sales activities.

## **Article 16**

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor's statutory agent, and shall furthermore attach it to the participation contract.

The written consent referred to in the preceding paragraph may not be in the form of an electronic document.

## **CHAPTER FOUR SALES ACTIVITIES**

### **Article 17**

A multi-level sales enterprise may not engage in any of the following activities:

1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;
2. requiring a participant to pay or undertake any security deposit, breach penalty, or other liability, where such is obviously unreasonable;
3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;

4. unjustifiably withholding commission, bonus, or other economic benefit payable to a participant after rescission or termination of the contract;
5. stipulating that a participant shall be paid greater benefits only after he pays training fees obviously incommensurate with the cost or pays other obviously unjustifiable consideration;
6. giving specific persons preferential treatment in a manner contrary to the multi-level sales organization or plan, such that the commission, bonus, or other economic benefits that should be available to other participants would be diminished;
7. improperly hindering a participant from returning goods arising from rescinding the contract or terminating the contract;
8. requiring a participant to undertake obviously unfair obligations.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to participants.

## **Article 18**

For purposes of regulating the activities of its participants in respect of multi-level sales, a multi-level sales enterprise shall stipulate that the following are breaches of contract by the participant, and shall prescribe methods for handling such breaches and faithfully enforce them:

1. promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means;
2. raising funds from other persons in the name of the multi-level sales enterprise or through its organization;
3. engaging in sales activities by means that run counter to public order or good morals;
4. affecting the market trading order or creating heavy losses to consumers by improper direct sales calls;
5. engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.

## **Article 19**

When recruiting participants by advertising or other means of communication to the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of recruiting employees or on other pretense.

The provisions of the preceding paragraph shall also apply to participants.

## **Article 20**

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

The preceding paragraph shall apply *mutatis mutandis* to assertions of the items in paragraph 1 of Article 11.

## **Article 21**

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints about infractions of law by enterprises.

# **CHAPTER FIVE INSPECTION OF BUSINESS**

## **Article 22**

A multi-level sales enterprise shall prepare and keep in its principal place of business the following written materials, and record therein on a monthly basis its development within the territory of the Republic of China:

1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant's name or appellation, citizen's ID card number or number appeared on the business license, address, and contact telephone number; and the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commission, bonus, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

## **Article 23**

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade such inspection or order.

## **CHAPTER SIX SUPPLEMENTARY PROVISIONS**

## **Article 24**

(Deleted)

## **Article 25**

(Deleted)

## **Article 26**

The Regulations shall be in force from the date of promulgation, with the exception of the provisions amended and promulgated on June 16, 1999, which shall be in force from July 1, 1999.



## **Appendix XI**

# **SUPERVISORY REGULATIONS GOVERNING MULTI-LEVEL SALES OF 2003**

*Promulgated on February 28, 1992*

*by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001*

*Amendments Promulgated on June 16, 1999*

*by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 01588*

*Amendments Promulgated on April 24, 2002*

*by Fair Trade Commission Order (91) Kung Mi Fa Tzu No. 0910003680*

*Amendments Promulgated on November 26, 2003*

*by Fair Trade Commission Order (92) Kung Mi Fa Tzu No. 0920010906*

## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 1**

These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Law (“the Law” for short).

### **Article 2**

The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise' filing for record, inspection of activities, required CPA certification of and public disclosure of financial statements, matters requiring notice to participants, the content of participation agreements, the protection of participants' interests, conduct prohibited as materially affecting the interests of participants, and managerial obligations toward participants.

### **Article 3**

(Deleted)

### **Article 4**

(Deleted)

## **CHAPTER TWO PROCEDURES OF REPORT FILING FOR RECORD**

### **Article 5**

Prior to commencing multi-level sales activities, a multi-level sales enterprise shall file a completed written report that accurately sets forth the following particulars for recording by the central competent authority:

1. business name, paid-in capital, responsible person, place of office, date of incorporation registration, and a photocopy of the profit-seeking business registration;
2. locations of the principal place of business and other places of business; sales organization or plan;
3. the date of commencement of multi-level sales activities;
4. multi-level sales system, which shall include the contents, offering requirements, and methods of calculating participants' commissions, bonuses, and other economic benefits; a forecast of the highest possible share of gross operating revenues that could be constituted by the total amount of such commissions, bonuses, and other economic benefits;
5. the content and format of the contract;
6. items, prices, unit costs, uses and sources of the goods to be sold or services to be provided, and related matters;
7. other matters specified by the central competent authority.

The format of the "written report" referred to in the preceding paragraph may be prescribed by the central competent authority.

## **Article 6**

If a multi-level sales enterprise fails to fully file all materials in accordance with the provisions of paragraph one of the preceding article, the central competent authority may order it to make necessary corrections and supplement.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

The multi-level sales enterprise shall perform the corrections or supplementation referred to in the preceding two paragraphs within the time period prescribed by the central competent authority.

## **Article 7**

Any change to the content of the report filed by a multi-level sales enterprise shall be reported prior to implementation. However, report on changes with respect to item 1, paragraph 1 of Article 5 may be filed within 15 days after the change.

No changes to the unit cost in item 6, paragraph 1 of Article 5 shall apply to the preceding paragraph.

## **Article 8**

A multi-level sales enterprise that ceases multi-level sales activities shall file a report with the central competent authority prior to cessation.

## **Article 9**

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority.

The publication referred to in the preceding paragraph may take the form of publication in the central competent authority's gazette or on its Internet site, or other forms sufficient to make the information widely known to the public.

## **Article 10**

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

# **CHAPTER THREE RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

## **Article 11**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no dissembling, false, or misleading presentations:

1. Paid-up capital and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;
2. multi-level sales system, which shall include the contents of the attainable benefits, acquiring requirements and measuring methods from goods or services directly promoted or sold by participants as well as from goods or services promoted or sold by participants who joined the multi-level sales system posteriorly. participants' promoting or selling commodities and services after participating the system;
3. laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. Items, prices, and uses of the goods or services, and other matters related thereto;
6. conditions, terms, and scope of warranties against defects of the goods or services;
7. conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal; and
8. other matters specified by the central competent authority.

Shall make no false or misleading presentations on items listed in the preceding

paragraph when a participant introduces another person to take part in the organization or plan.

## **Article 12**

A multi-level sales enterprise shall enter into a participation contract in writings with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 8 of paragraph 1 of the preceding article.

The writings referred to in the preceding paragraph may not be in the form of an electronic document.

## **Article 13**

The content of written contract, which should be disclosed by multi-level sales enterprise to participants, in accordance with item 7, paragraph 1 of article 11, should include articles 23-1 through 23-3 of the Law, except for those are beneficial to participants.

## **Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of operational rules or plans by such participant or other reasons attributable to such participant shall be specified in the contract.

## **Article 15**

A multi-level sales enterprise shall prepare and keep in its main office the following audited financial statements for the previous accounting year certified by a Certified Public Accountant:

1. balance sheets;
2. income statement.

A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commission, bonus, or other economic benefit

during the preceding year, may inspect the audited financial statements as specified in the preceding paragraph of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding two paragraphs for two months after it ceases multi-level sales activities.

### **Article 16**

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor's statutory agent, and shall furthermore attach it to the participation contract.

The written consent referred to in the preceding paragraph may not be in the form of an electronic document.

## **CHAPTER FOUR SALES ACTIVITIES**

### **Article 17**

A multi-level sales enterprise may not engage in any of the following activities:

1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;
2. requiring a participant to pay or undertake any security deposit, breach penalty, or other liability, where such is obviously unreasonable;
3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;
4. unjustifiably withholding commission, bonus, or other economic benefit payable to a participant after rescission or termination of the contract;
5. stipulating that a participant shall be paid greater benefits only after he pays training fees obviously incommensurate with the cost or pays other obviously

unjustifiable consideration;

6. giving specific persons preferential treatment in a manner contrary to the multi-level sales organization or plan, such that the commission, bonus, or other economic benefits that should be available to other participants would be diminished;
7. improperly hindering a participant from returning goods arising from rescinding the contract or terminating the contract;
8. requiring a participant to undertake obviously unfair obligations.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to participants.

## **Article 18**

For purposes of regulating the activities of its participants in respect of multi-level sales, a multi-level sales enterprise shall stipulate that the following are breaches of contract by the participant, and shall prescribe methods for handling such breaches and faithfully enforce them:

1. promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means;
2. raising funds from other persons in the name of the multi-level sales enterprise or through its organization;
3. engaging in sales activities by means that run counter to public order or good morals;
4. affecting the market trading order or creating heavy losses to consumers by improper direct sales calls;
5. engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.

## **Article 19**

When recruiting participants by advertising or other means of communication to the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of

recruiting employees or on other pretense.

The provisions of the preceding paragraph shall also apply to participants.

## **Article 20**

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

## **Article 21**

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints about infractions of law by enterprises.

# **CHAPTER FIVE INSPECTION OF BUSINESS**

## **Article 22**

A multi-level sales enterprise shall prepare and keep in its principal place of business the following written materials, and record therein on a monthly basis its development within the territory of the Republic of China:

1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant's name or appellation, citizen's ID card number or number appeared on the business license, address, and contact telephone number; and the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and

other matters related thereto;

6. status of the payment of commission, bonus, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

### **Article 23**

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade such inspection or order.

## **CHAPTER SIX SUPPLEMENTARY PROVISIONS**

### **Article 24**

(Deleted)

### **Article 25**

(Deleted)

### **Article 26**

The Regulations shall be in force from the date of promulgation.



## **Appendix XII**

# **SUPERVISORY REGULATIONS GOVERNING MULTI-LEVEL SALES OF 2004**

*Promulgated on February 28, 1992*

*by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001*

*Amendments Promulgated on June 16, 1999*

*by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 01588*

*Amendments Promulgated on April 24, 2002*

*by Fair Trade Commission Order Kung Mi Fa Tzu No. 0910003680*

*Amendments Promulgated on November 26, 2003*

*by Fair Trade Commission Order Kung Mi Fa Tzu No. 0920010906*

*Amendments Promulgated on December 24, 2004*

*by Fair Trade Commission Order Kung Mi Fa Tzu No. 0930009764*

## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 1**

These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Law (“the Law” for short).

### **Article 2**

The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise' filing for record, inspection of activities, required CPA certification of and public disclosure of financial statements, matters requiring notice to participants, the content of participation agreements, the protection of participants' interests, conduct prohibited as materially affecting the interests of participants, and

managerial obligations toward participants.

### **Article 3**

(Deleted)

### **Article 4**

(Deleted)

## **CHAPTER TWO PROCEDURES OF REPORT FILING FOR RECORD**

### **Article 5**

Prior to commencing multi-level sales activities, a multi-level sales enterprise shall file a completed written report that accurately sets forth the following particulars for recording by the central competent authority:

1. business name, paid-in capital, responsible person, place of office, date of incorporation registration, and a photocopy of the profit-seeking business registration;
2. locations of the principal place of business and other places of business; sales organization or plan;
3. the date of commencement of multi-level sales activities;
4. multi-level sales system, which shall include the contents, offering requirements, and methods of calculating participants' commissions, bonuses, and other economic benefits; a forecast of the highest possible share of gross operating revenues that could be constituted by the total amount of such commissions, bonuses, and other economic benefits;
5. the content and format of the contract;
6. items, prices, unit costs, uses and sources of the goods to be sold or services to be provided, and related matters;
7. other matters specified by the central competent authority.

The format of the "written report" referred to in the preceding paragraph may be

prescribed by the central competent authority.

## **Article 6**

If a multi-level sales enterprise fails to fully file all materials in accordance with the provisions of paragraph one of the preceding article, the central competent authority may order it to make necessary corrections and supplement.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

The multi-level sales enterprise shall perform the corrections or supplementation referred to in the preceding two paragraphs within the time period prescribed by the central competent authority.

## **Article 7**

Any change to the content of the report filed by a multi-level sales enterprise shall be reported prior to implementation. However, report on changes with respect to item 1, paragraph 1 of Article 5 may be filed within 15 days after the change.

No changes to the unit cost in item 6, paragraph 1 of Article 5 shall apply to the preceding paragraph.

## **Article 8**

A multi-level sales enterprise that ceases multi-level sales activities shall file a report with the central competent authority prior to cessation.

## **Article 9**

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority.

The publication referred to in the preceding paragraph may take the form of

publication on the World Wide Web site, or other forms sufficient to make the information widely known to the public.

### **Article 10**

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

## **CHAPTER THREE RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

### **Article 11**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no dissembling, false, or misleading presentations:

1. Paid-up capital and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;
2. multi-level sales system, which shall include the contents of the attainable benefits, acquiring requirements and measuring methods from goods or services directly promoted or sold by participants as well as from goods or services promoted or sold by participants who joined the multi-level sales system posterior;
3. laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. Items, prices, and uses of the goods or services, and other matters related thereto;
6. conditions, terms, and scope of warranties against defects of the goods or services;
7. conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal; and

8. other matters specified by the central competent authority.

Shall make no false or misleading presentations on items listed in the preceding paragraph when a participant introduces another person to take part in the organization or plan.

## **Article 12**

A multi-level sales enterprise shall enter into a participation contract in writings with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 8 of paragraph 1 of the preceding article.

The writings referred to in the preceding paragraph may not be in the form of an electronic document.

## **Article 13**

The content of written contract, which should be disclosed by multi-level sales enterprise to participants, in accordance with item 7, paragraph 1 of article 11, should include articles 23-1 through 23-3 of the Law, except for those are beneficial to participants.

## **Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of operational rules or plans by such participant or other reasons attributable to such participant shall be specified in the contract.

## **Article 15**

A multi-level sales enterprise shall prepare and keep in its main office the following audited financial statements for the previous accounting year certified by a Certified Public Accountant:

1. balance sheets;
2. income statement.

A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commission, bonus, or other economic benefit during the preceding year, may inspect the audited financial statements as specified in the preceding paragraph of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding two paragraphs for two months after it ceases multi-level sales activities.

### **Article 16**

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor's statutory agent, and shall furthermore attach it to the participation contract.

The written consent referred to in the preceding paragraph may not be in the form of an electronic document.

## **CHAPTER FOUR SALES ACTIVITIES**

### **Article 17**

A multi-level sales enterprise may not engage in any of the following activities:

1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;
2. requiring a participant to pay or undertake any security deposit, breach penalty, or other liability, where such is obviously unreasonable;
3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;
4. unjustifiably withholding commission, bonus, or other economic benefit payable to a participant after rescission or termination of the contract;

5. stipulating that a participant shall be paid greater benefits only after he pays training fees obviously incommensurate with the cost or pays other obviously unjustifiable consideration;
6. giving specific persons preferential treatment in a manner contrary to the multi-level sales organization or plan, such that the commission, bonus, or other economic benefits that should be available to other participants would be diminished;
7. improperly hindering a participant from returning goods arising from rescinding the contract or terminating the contract;
8. requiring a participant to undertake obviously unfair obligations.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to participants.

## **Article 18**

For purposes of regulating the activities of its participants in respect of multi-level sales, a multi-level sales enterprise shall stipulate that the following are breaches of contract by the participant, and shall prescribe methods for handling such breaches and faithfully enforce them:

1. promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means;
2. raising funds from other persons in the name of the multi-level sales enterprise or through its organization;
3. engaging in sales activities by means that run counter to public order or good morals;
4. affecting the market trading order or creating heavy losses to consumers by improper direct sales calls;
5. engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.

## **Article 19**

When recruiting participants by advertising or other means of communication to

the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of recruiting employees or on other pretense.

The provisions of the preceding paragraph shall also apply to participants.

### **Article 20**

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

### **Article 21**

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints about infractions of law by enterprises.

## **CHAPTER FIVE INSPECTION OF BUSINESS**

### **Article 22**

A multi-level sales enterprise shall prepare and keep in its principal place of business the following written materials, and record therein on a monthly basis its development within the territory of the Republic of China:

1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant's name or appellation, citizen's ID card number or number appeared on the business license, address, and contact telephone number; and the areas in which the participants are mainly located;

4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commission, bonus, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

### **Article 23**

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade such inspection or order.

## **CHAPTER SIX SUPPLEMENTARY PROVISIONS**

### **Article 24**

(Deleted)

### **Article 25**

(Deleted)

### **Article 26**

The Regulations shall be in force from the date of promulgation.



## **Appendix XIII**

# **SUPERVISORY REGULATIONS GOVERNING MULTI-LEVEL SALES OF 2009**

*Promulgated on February 28, 1992*

*by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001*

*Amendments Promulgated on June 16, 1999*

*by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 01588*

*Amendments Promulgated on April 24, 2002*

*by Fair Trade Commission Order Kung Mi Fa Tzu No. 0910003680*

*Amendments Promulgated on November 26, 2003*

*by Fair Trade Commission Order Kung Mi Fa Tzu No. 0920010906*

*Amendments Promulgated on December 24, 2004*

*by Fair Trade Commission Order Kung Mi Fa Tzu No. 0930009764*

*Amendments Promulgated on May 25, 2009*

*by Fair Trade Commission Order Kung Mi Fa Tzu No. 0980004914*

## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 1**

These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Act ("the Act" for short).

### **Article 2**

The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise' filing for record, inspection of activities, required CPA certification of and public disclosure of financial statements, matters requiring notice

to participants, the content of participation agreements, the protection of participants' interests, conduct prohibited as materially affecting the interests of participants, and managerial obligations toward participants.

### **Article 3**

(Deleted)

### **Article 4**

(Deleted)

## **CHAPTER TWO PROCEDURES OF REPORT FILING FOR RECORD**

### **Article 5**

Prior to engaging in multi-level sales operations, a multi-level sales enterprise, should prepare a complete and truthful report containing the following items, and apply for record by the central competent authority:

1. the name of the enterprise, the actual paid in capital, the representative or legally responsible natural person, location, date of establishment, and documents pertaining to the corporation and business registration;
2. primary place of business and other business operating places;
3. the date of commencement of multi-level sales operations;
4. conditions for participating in the multi-level sales plan or organization;
5. the multi-level sales structure, including commissions, bonuses and other economic benefits provided, conditions for earning such remuneration, methods of calculation, and estimates for the highest percentage such payments constitute within the overall sales income;
6. the participation agreement terms and conditions as well as the form of the contract;
7. the itemized products or services for sale, prices, unit costs, uses of the product or service, place of origin or source, and other related matters;

8. for enterprises which have a partial refund policy providing a standard for determining the degree of use or damage of a product or service pursuant to Article 23-2 or 23-3 of the Act, provide the standard and its contents; and
9. such other matters as may be required by the central competent authority.

The format and process of report discussed in the preceding paragraph may be prescribed by the central competent authority.

## **Article 6**

Multi-level sales enterprises which fail to provide a complete report meeting the requirements of paragraph one of the preceding article, shall be deemed to not have filed a complete report, and the central competent authority may return their report, and order them to resubmit a complete one for record.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

Regarding any of the requirements in paragraph one of the preceding article, the central competent authority may in its discretion determine it to be appropriate, to order the multi-level sales enterprise to provide additional supplemental amendments to the report; if the amendatory supplements are not filed, then the preceding paragraph may be applied.

## **Article 7**

Except for changes regarding the unit costs in Article 5(1)(vii), all other alterations in the required materials submitted in the report for the multi-level sales enterprise, should be reported prior to their going into effect. But for items included within the scope of Article 5(1)(i) above, which may have changed, it is permitted to report within 15 days of the change.

The format and process of making amendment to the report discussed in the preceding paragraph may be prescribed by the central competent authority.

## **Article 8**

Multi-level sales enterprises which intend to cease their multi-level sales operations, should file a written report with the central competent authority prior to cessation.

## **Article 9**

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority.

The publication referred to in the preceding paragraph may take the form of publication on the World Wide Web site, or other forms sufficient to make the information widely known to the public.

## **Article 10**

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

# **CHAPTER THREE RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

## **Article 11**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no dissembling, false, or misleading presentations:

1. Paid-up capital and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;

2. multi-level sales structure, which shall include the contents of the attainable benefits, acquiring requirements and measuring methods from goods or services directly promoted or sold by participants as well as from goods or services promoted or sold by participants who joined the multi-level sales system posteriorly;
3. laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. the itemized products or services for sale, prices, unit costs, uses of the product or service, place of origin or source, and other related matters;
6. conditions, terms, and scope of warranties against defects of the goods or services;
7. conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal; and
8. such other matters as may be required by the central competent authority.

Shall make no false or misleading presentations on items listed in the preceding paragraph when a participant introduces another person to take part in the organization or plan.

## **Article 12**

A multi-level sales enterprise shall enter into a participation contract in writings with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 8 of paragraph 1 of the preceding article.

The writings referred to in the preceding paragraph may not be in the form of an electronic document.

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The content of written contract, which should be disclosed by multi-level sales enterprise to participants, in accordance with item 7, paragraph 1 of article 11, should include Articles 23-1 through 23-3 of the Act, except for those are beneficial to participants.

## **Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of operational rules or plans by such participant or other reasons attributable to such participant shall be specified in the contract.

## **Article 15**

A multi-level sales enterprise shall prepare and keep in its main office the following audited financial statements for the previous accounting year certified by a Certified Public Accountant:

1. balance sheets; and
2. income statement.

A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commissions, bonuses, or other economic benefit during the preceding year, may inspect the audited financial statements as specified in the preceding paragraph of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding t

## **Article 16**

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor's statutory agent, and shall furthermore attach it to the participation contract.

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## **CHAPTER FOUR SALES ACTIVITIES**

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1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;
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3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;
4. unjustifiably withholding commissions, bonuses, or other economic benefit payable to a participant after rescission or termination of the contract;
5. stipulating that a participant shall be paid greater benefits only after he pays training fees obviously incommensurate with the cost or pays other obviously unjustifiable consideration;
6. giving specific persons preferential treatment in a manner contrary to the multi-level sales organization or plan, such that the commissions, bonuses, or other economic benefits that should be available to other participants would be diminished;
7. improperly hindering a participant from returning goods arising from rescinding the contract or terminating the contract;
8. requiring a participant to undertake obviously unfair obligations.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to participants.

### **Article 18**

For purposes of regulating the activities of its participants in respect of

multi-level sales, a multi-level sales enterprise shall stipulate that the following are breaches of contract by the participant, and shall prescribe methods for handling such breaches and faithfully enforce them:

1. promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means;
2. raising funds from other persons in the name of the multi-level sales enterprise or through its organization;
3. engaging in sales activities by means that run counter to public order or good morals;
4. affecting the market trading order or creating heavy losses to consumers by improper direct sales calls;
5. engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.

## **Article 19**

When recruiting participants by advertising or other means of communication to the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of recruiting employees or on other pretense.

The provisions of the preceding paragraph shall also apply to participants.

## **Article 20**

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

## **Article 21**

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints

about infractions of law by enterprises.

## **CHAPTER FIVE INSPECTION OF BUSINESS**

### **Article 22**

A multi-level sales enterprise shall prepare and keep in its primary place of business the following written materials, and record therein on a monthly basis its development within the territory of the Republic of China:

1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant's name or appellation, citizen's ID card number or number appeared on the business license, address, and contact telephone number; and the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commissions, bonuses, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

### **Article 23**

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade

such inspection or order.

## **CHAPTER SIX SUPPLEMENTARY PROVISIONS**

### **Article 24**

(Deleted)

### **Article 25**

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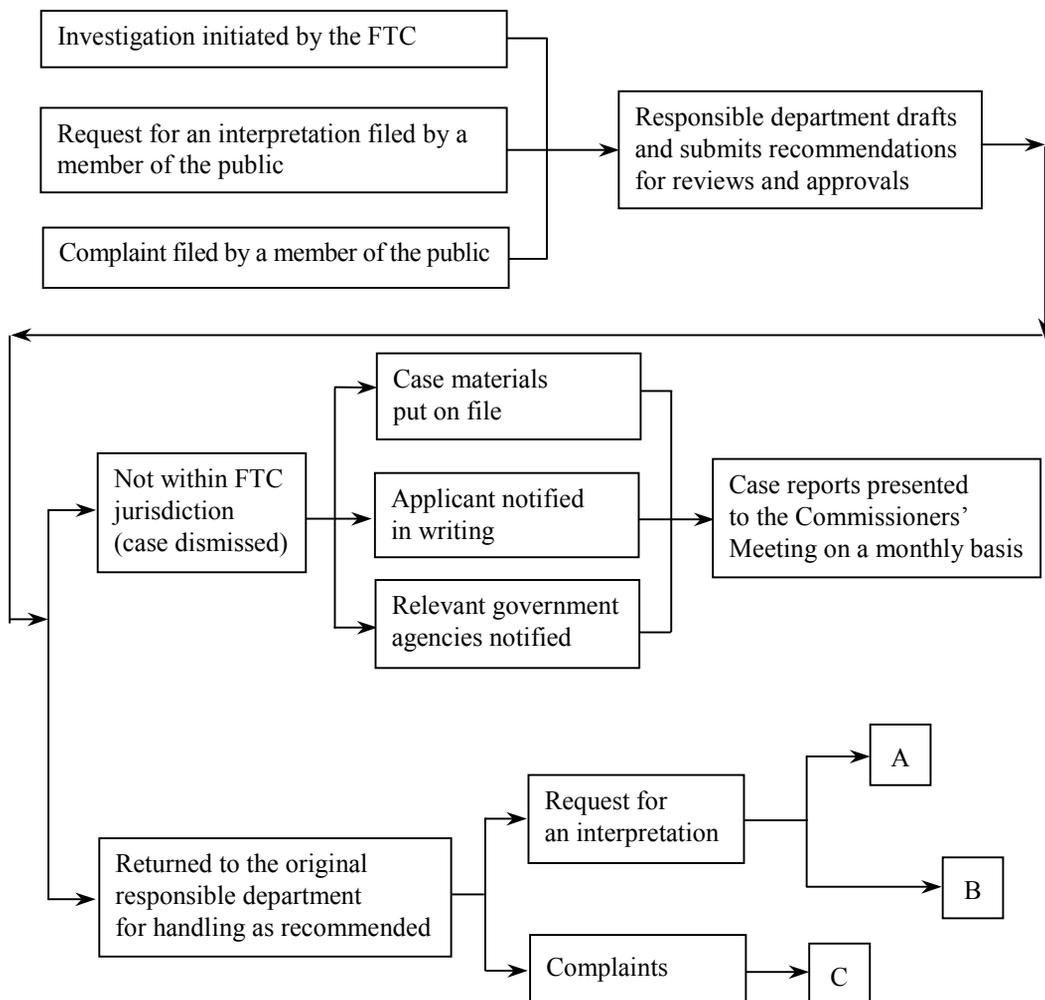
### **Article 26**

The Regulations shall be in force from the date of promulgation.

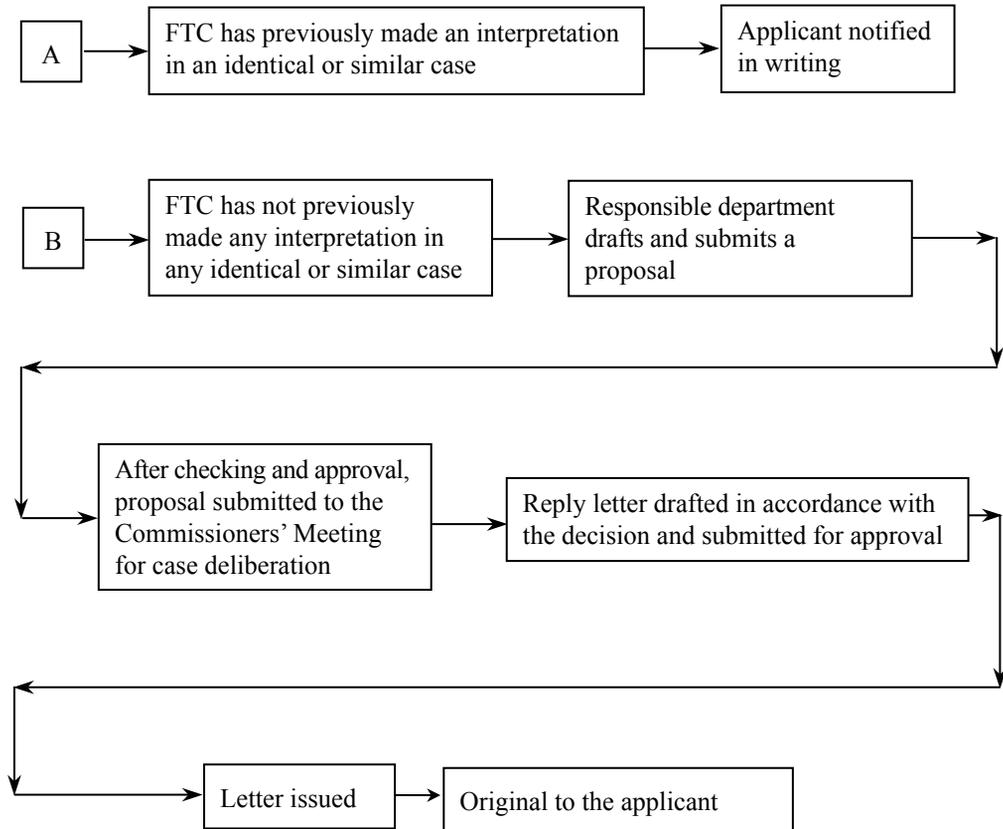
## Appendix XIV

### Procedures for Handling Complaints and Requests for Interpretations of the Fair Trade Law

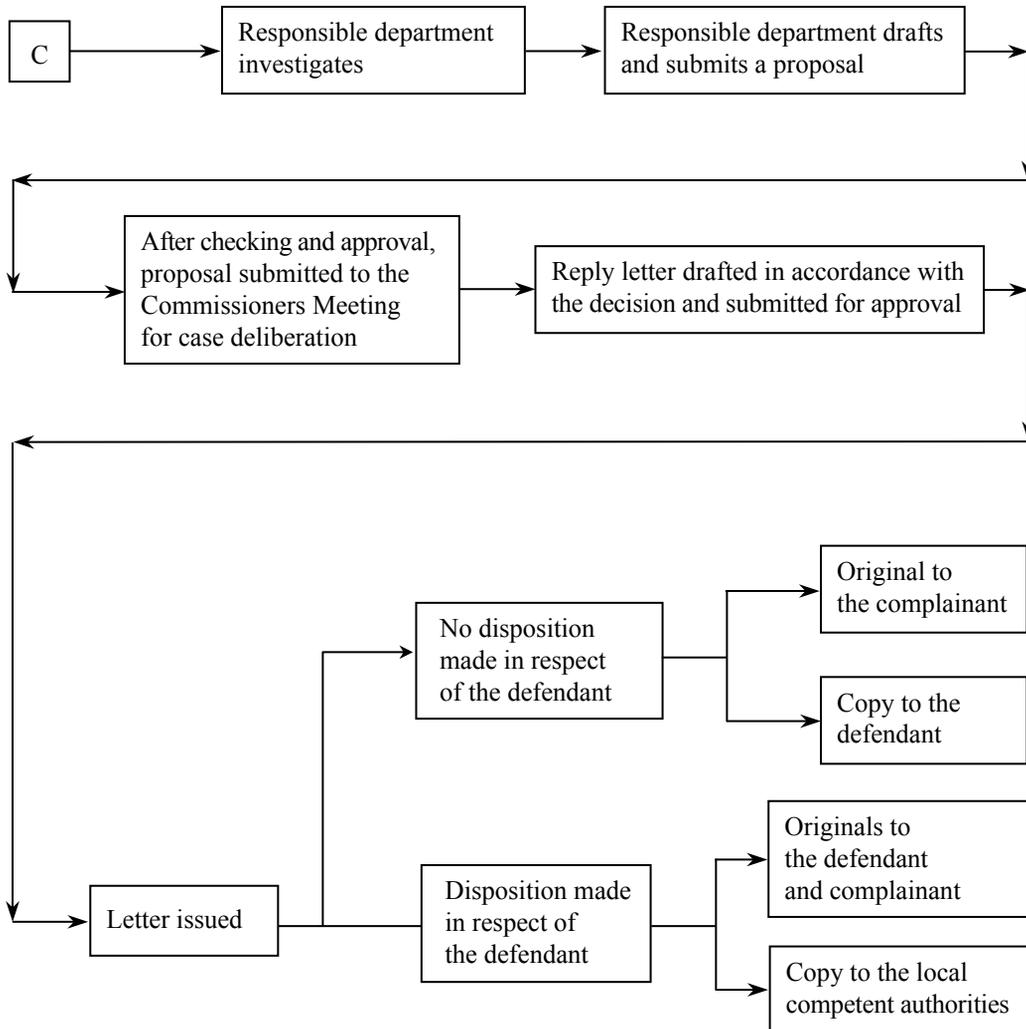
#### Application Procedures for Various Cases



## I. Request for an Interpretation of the Fair Trade Law



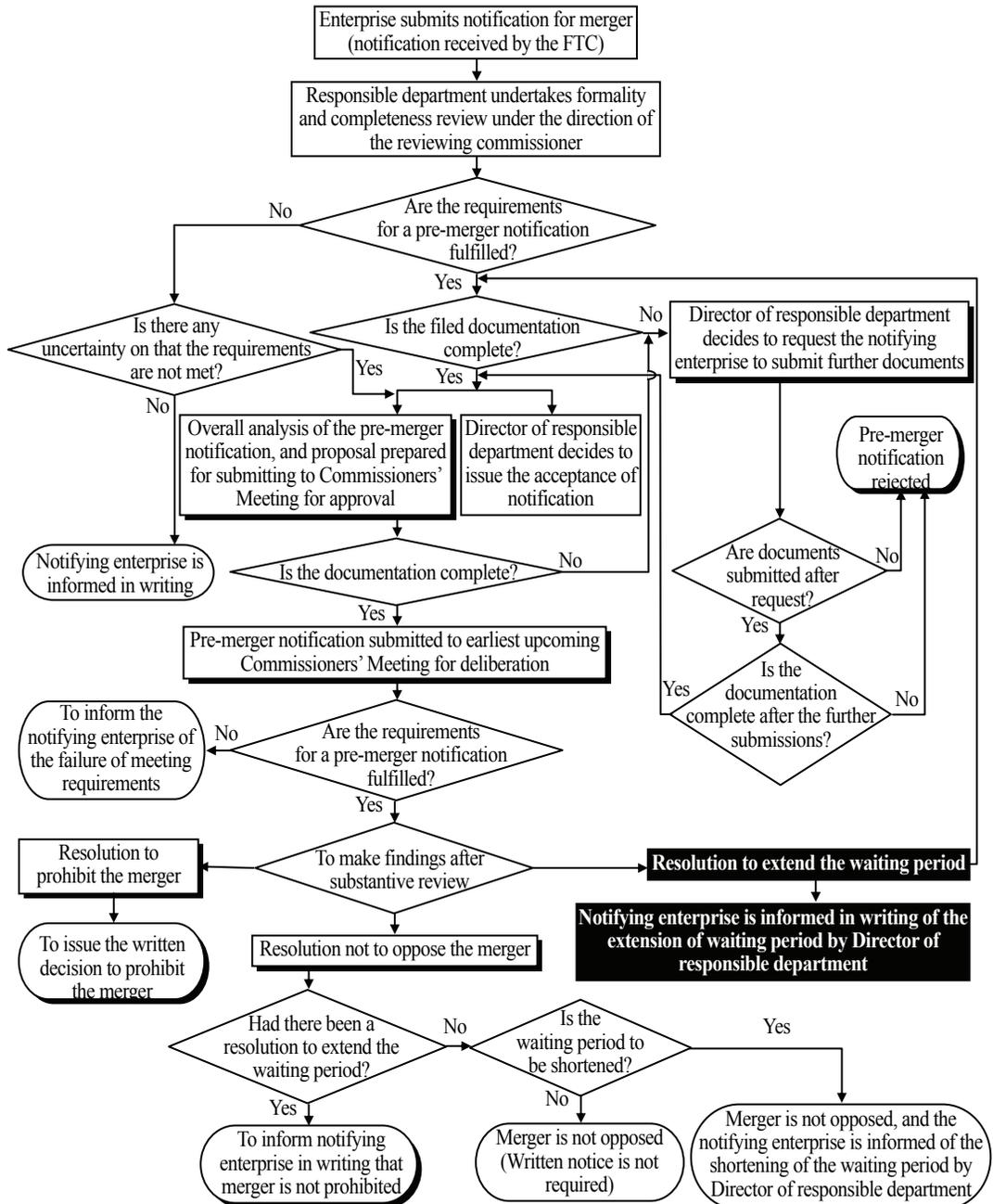
## II. Complaints





# Appendix XV

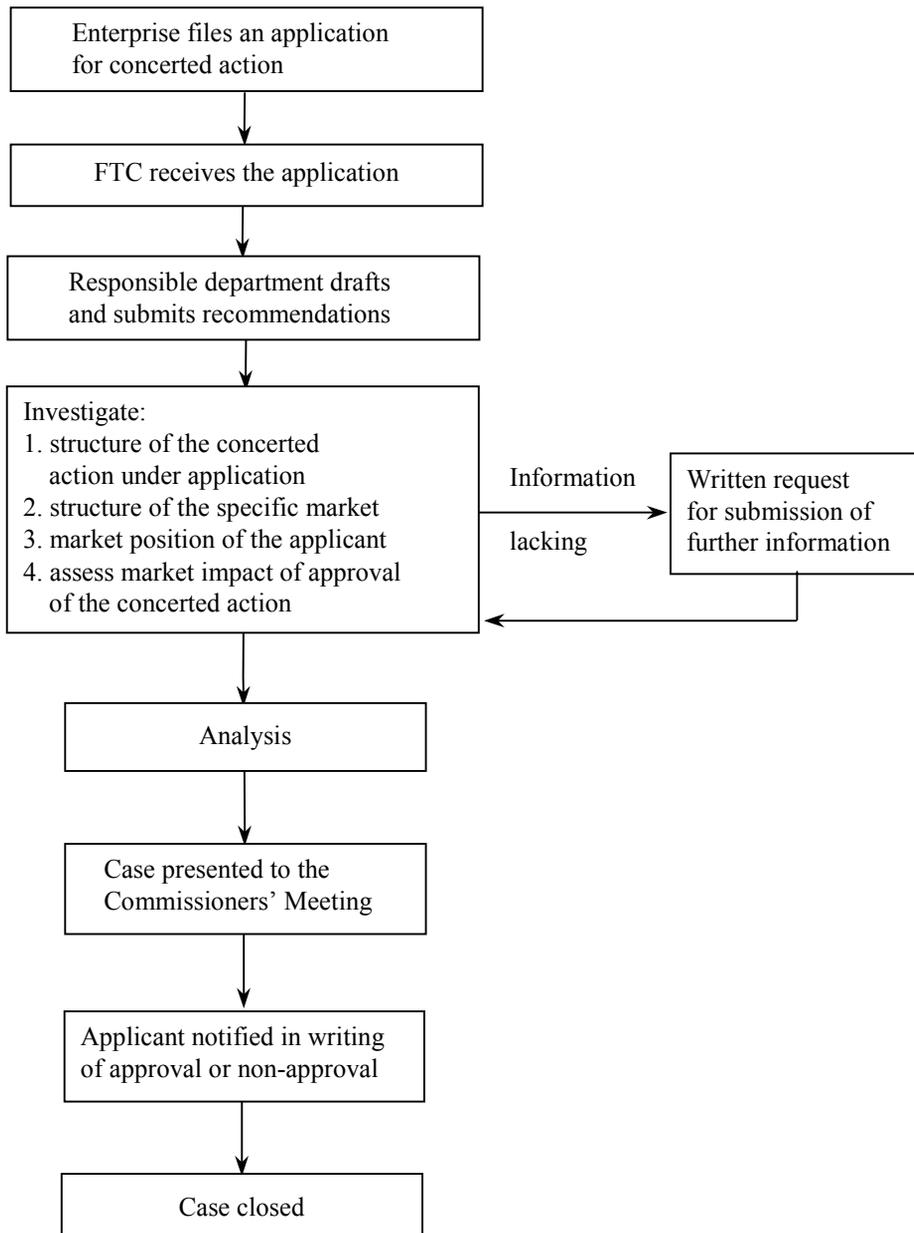
## Procedures for Pre-Merger Notification by Enterprises





## Appendix XVI

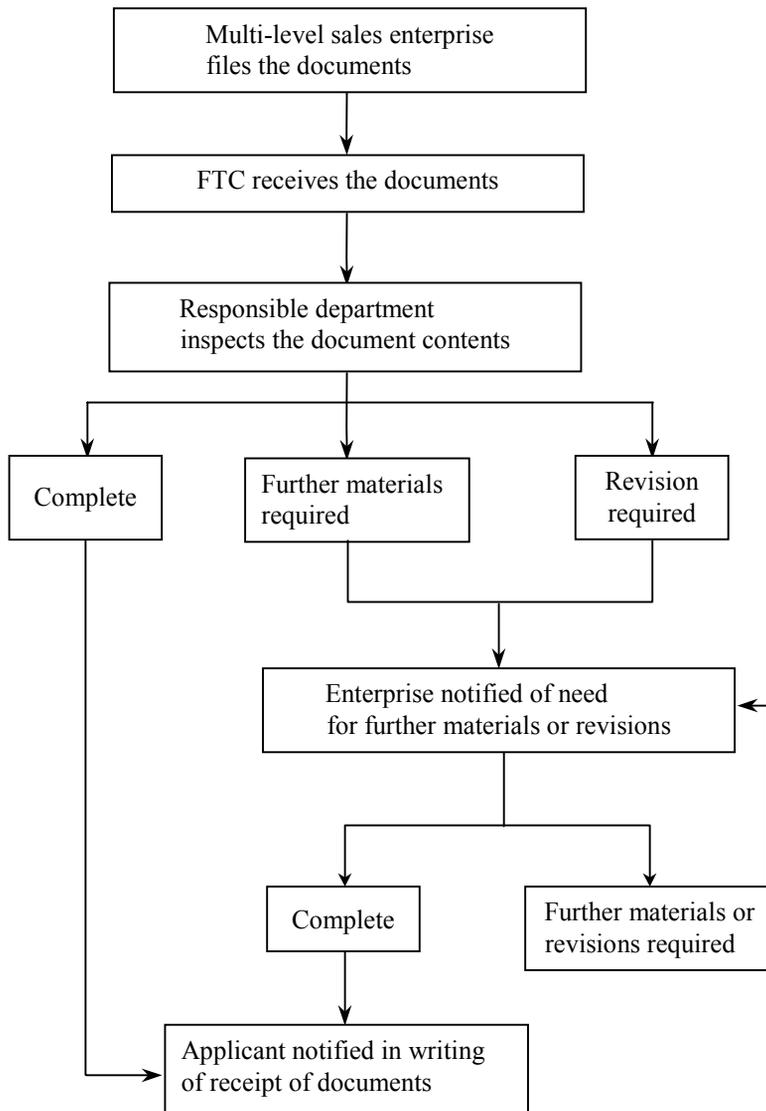
### Procedures for Handling Applications for Concerted Actions of Enterprises





## Appendix XVII

### Procedures for Handling Document Filing by Multi-level Sales Enterprises





# Chronological Table of Cases

The numbers in the first column represent the times of Commissioners' Meetings at which the case was decided. The numbers within parentheses represent the date and the year when the Commissioners' Meetings were held. Next to the commissioners' Meetings dates, the names of the cases are listed. The last number after the name of the case represents the reference page for the case.

Date	Name of the Case	Page
791(01/04/07)	Koninklijke Philips Electronics, N.V. was complained for violating the Fair Trade Law by conducting illegal patent licensing acts when selling recordable DVD (including DVD-R and DVD+R) to domestic companies	3,63
791(01/04/07)	YOYO Marketing Co., Ltd. was complained for violating the Fair Trade Law by using identical or similar appearance and symbol of another's product to sell "PROGEN YOYO Diaper"	75,140
791(01/04/07)	Far EasTone Telecommunications Co., Ltd. violated Articles 21 and 24 of the Fair Trade Law by issuing untrue news release and comparison advertisements of telecommunications plans	81,137
792(01/11/07)	The board of directors of Tourist Bus Association of Taiwan Province violated the Fair Trade Law by making a resolution to request the association of each county/city to invite business operators and mobile license lessees to jointly raise transportation charges	41
792(01/11/07)	Chunghwa Evergreen Technology Ltd. violated the Fair Trade Law by engaging in unlawful multi-level sales activities	121
793(01/18/07)	Taiwan Salt Industrial Co., Ltd. violated the Fair Trade Law by conducting resale price maintenance clause in its franchising and distribution contracts	57

793(01/18/07)	Mannatech Incorporated, Taiwan Branch, violated Article 23-2(2) of the Fair Trade Law by failing to purchase the goods back at a price of 90% the original purchase price when a participant terminated the contract and requested to return the goods	123
794(01/25/07)	Non-Life Insurance Associations of the R.O.C. violated the Fair Trade Law by engaging in concerted action that was sufficient to affect the supply and demand in the property insurance market by consenting to prevent its members from complying with the second stage of the “Premium Liberalization of the Property Insurance Market”	43
794(01/25/07)	Shenton Marketing Incorporation violated the Fair Trade Law by engaging in unlawful multi-level sales activities	125
796(02/08/07)	Lite-On IT Corporation filed a pre-merger notification regarding its intention to merge with Philips BenQ Digital Storage Inc	13
798(02/15/07)	Yang, Shuang Mao of Potato Cafe violated the Fair Trade Law by placing false Potato Cafe franchising advertisements	84
800(03/08/07)	Holiday Entertainment Co., Ltd. filed a pre-merger notification regarding its intention to merge with Cashbox Partyworld Co., Ltd.	38
801(03/15/07)	Jing-Shen International Enterprise Co., Ltd. violated the Fair Trade Law by placing false online advertisements to sell AFC products	86
803(03/29/07)	Chunghwa Telecom Co., Ltd. filed a pre-merger notification to the FTC regarding its intention to merge with SENA International Co., Ltd.	14
803(03/29/07)	Japan Tobacco Inc. filed a pre-merger notification to the FTC regarding its intention to acquire shares of Gallaher Group Plc	16
803(03/29/07)	Yahoo! Taiwan Inc. filed a pre-merger notification to the FTC regarding its intention to acquire 100% shares of Wretch in accordance with Article 11(1)(i) and (ii) of the Fair Trade Law	18

803(03/29/07)	All Chinese Internet Inc. violated the Fair Trade Law by placing false online advertisements and replicating another's business database	65,88
804(04/12/07)	Taipei Hsien Jewelry Commercial Association violated the Fair Trade Law by restraining prices of ornamental gold of its members	45
806(08/19/07)	Ladder Digital Education Corp. violated the Fair Trade Law by failing to purchase back the supply of service when such a participant terminated the contract and requested for returning the goods	127
807(04/26/07)	Kang Hsuan Educational Publishing Corp., Nani Books Corp., and Han Lin Publishing Co. Ltd. violated the Fair Trade Law by providing improper gifts in the marketing practices	142
808(05/03/07)	Msscorks Co. Ltd., Tmscorps Co. Ltd., Integrated Service Technology Inc. and Pu Shih To Delicacy Co. Ltd. were complained for violating the Fair Trade Law by stealing business secrets and helped the former employees avoid the non-competition clause	69,144
809(05/10/07)	Hitachi Sales Corporation of Taiwan violated Article 21(1) of the Fair Trade Law by placing untrue online advertisement to sell washing machines	92
811(05/24/07)	CitiBank filed a pre-merger notification regarding its intention to merge with Overseas Chinese Bank in terms of Article 11 of the Fair Trade Law	21
811(05/24/07)	MiTAC International Corporation filed a pre-merger notification to the FTC regarding its intention to merge with Tyan Computer Corporation	22
812(05/31/07)	Cathay Pacific Airways Limited Taiwan Branch, the enterprise in Hong Kong, filed a pre-merger notification to the FTC regarding its intention to merge with Hong Kong Dragon Airlines Limited	24
812(05/31/07)	Bristol-Myers Squibb (Taiwan) Ltd. and Nestle Taiwan Ltd. violated the Fair Trade Law by restraining resale prices of	59

	milk powder	
812(05/31/07)	Fuhwa Commercial Bank Co. Ltd. violated Article 24 of the Fair Trade Law by not providing two types of housing loan schemes, “discharge at any time” and “restrict the period of discharge,” for the borrower’s choices without restraints at the time of the conclusion of the agreement	147
813(06/07/07)	Poya-Living-Mart Co. Ltd. violated Article 21 of the Fair Trade Law by publishing false, untrue and misleading sales messages about the contents of the products in the advertisement catalog	95
813(06/07/07)	Ms. Chuang, Yun-Ni and Tung-Hao Corporation violated Article 21 of the Fair Trade Law by placing untrue sales information on Yahoo’s auction site	97
813(06/07/07)	Power Way International Trading Co. Ltd. violated the Fair Trade Law by engaging in multi-level sales	130
813(06/07/07)	Gsharp Corporation Taiwan Branch violated Article 24 of the Fair Trade Law by publishing comparison advertisement to sell repellent products	149
815(06/21/07)	Han-Shen Development Co. Ltd. violated Article 21 of the Fair Trade Law by publishing untrue construction advertisement on “Heirloom Castle”	99
816(06/14/07)	Deltamac (Taiwan) Co. Ltd. violated the Fair Trade Law by improperly holding the contracts after entered in to agreements with rental enterprises	151
818(06/12/07)	Camangi Corporation was complained for violating the Fair Trade Law by improperly notifying or issuing warning letters to the trading counterparts of the competitor	72,117,154
819(07/19/07)	Fuyang Media Co., Ltd. violated the Fair Trade Law by failing to file pre-merger notifications regarding its intention to merge with North Coast Cable TV Corp., Mangrove CATV Corp., Yeong Jia Leh Cable TV Co., Ltd., and Shin Ho Cable TV Co. Ltd.	5
819(07/19/07)	Hueia Yeha Enterprise Co., Ltd. was complained for	77,156

	violating Articles 20 and 24 of the Fair Trade Law by selling foot massagers (HY-19934)	
821(08/02/07)	Pacific Rehouse Co., Ltd., three other real estates agencies, and Giga House were complained for violating the Fair Trade Law by failing to file a pre-merger notification and concerted action application to the FTC regarding, respectively, their intentions to merge and form a concerted action, publishing an untrue advertisement and conducting a joint sale	27,47,105
821(08/02/07)	Chu Ho Fa Construction Corporation violated Article 21 of the Fair Trade Law by publishing an untrue pre-sale housing advertisement on “Li Ching Century Governor”	102
823(08/16/07)	Hui Kang Co. Ltd. violated Article 21 of the Fair Trade Law by publishing an untrue advertisement of “with every NT\$ 200 of purchases, the customer gets cash vouchers to the value of NT\$ 200 for free”	109
823(08/16/07)	Taiwan Secom Co., Ltd. violated the Fair Trade Law by publishing an untrue advertisement	112
824(08/23/07)	Taiwan Family Mart Co., Ltd. filed a pre-merger notification to the FTC regarding its intention to merger with Nikomart Co.	31
825(08/30/07)	Uni-President Enterprises Corporation, Wei Chuan Corp., and Kuang Chuan Dairy Co., Ltd. violated the Fair Trade Law by simultaneously raising sales prices of fresh milk	159
826(09/06/07)	The liquified petroleum gas distributors in Huwei Township, Yunlin County violated the Fair Trade Law by jointly raising the sales price of liquified petroleum gas	52
826(09/06/07)	Chinfon Commercial Bank Co. Ltd. violated the Fair Trade Law by requiring the borrower to conform to the equivocal general clause of law	162
827(09/13/07)	Nation Petroleum Corp. violated the Fair Trade Law by failing to file a pre-merger notification to the FTC regarding its intention to controll the business operation and employment or discharge of personnel of Formosa	8

827(09/27/07)	Vie Show Cinemax Co., Ltd. filed a pre-merger notification to the FTC regarding its intention to merge with Wang Pai Jih Hsin Cinema Co. Ltd. in terms of Article 11 of the Fair Trade Law	34
829(09/27/07)	Acer Inc. filed a pre-merger notification to the FTC regarding its intention to merge with Gateway, Inc.	36

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Taipei Supreme Administrative Court Decision (96)	Lung Hai Yang Hsing Co. Ltd. filed an appeal against the FTC's decision and the Taipei High Administrative Court Judgment (93) Su Tzu No. 865, however, the Supreme Administrative Court dismissed the appeal	115
Taipei Supreme Administrative Court Decision (96) Pan-Tzu No. 801	The Supreme Administrative Court's decision on Mei Yen Li Development Co. Ltd.'s violation of the Fair Trade Law, regarding its failure to purchase back the goods at the time a participant terminated the contract and requested for returning the goods	134

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