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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 49 selected typical cases decided by the FTC in 2008 and 2009, and 2 judicial cases decided by Taipei High 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 7 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 11 cases and 1 judicial case 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 1 case on unfair competition, which is related to resale price maintenance and regulated by Article 18 of the Fair Trade Law.
- Chapter 6 compiles 2 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 11 cases on false, untrue and misleading advertisements, which are regulated by Article 21 of the Fair Trade Law.
- Chapter 8 compiles 1 case on damaging to others' business reputation, which is regulated by Article 22 of the Fair Trade Law.
- Chapter 9 compiles on 3 cases 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 10 compiles 12 cases and 1 judicial case 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

Royal Dutch Philips Electronics Ltd. & Sony Corporation of Japan with Taiyo Yuden Co., Ltd.

938th Commissioners' Meeting (2009)

Case: Taipei Supreme Administrative Court dismissed the second appeal filed by the FTC against Royal Dutch Philips Electronics Ltd. and Sony Corporation of Japan with Taiyo Yuden Co., Ltd. for the violation of the Fair Trade Law and required the FTC reissue a proper ruling in accordance with the law

Key Word(s): CD-R, orange book, license agreement

Reference: Fair Trade Commission Decision of October 28, 2009 (the 938th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098156

Industry: Data Storage Media Units Manufacturing (2740)

Relevant Law(s): Article 10 of the Fair Trade Law

Summary:

1. This case originated from the complaint filed in 1999 against Royal Dutch Philips Electronics Ltd. (hereinafter referred to as Philips) and Sony Corporation of Japan (hereinafter referred to as Sony) with Taiyo Yuden Co., Ltd. (hereinafter called Taiyo Yuden) regarding the violation of the Fair Trade Law (FTL) arising from their licensing of the CD-R manufacturing technology. The FTC, in its 480th Commissioners' Meeting on January 11, 2001, imposed administrative fines of eight million, four million, and two million New Taiwan Dollars respectively on Philips, Sony, and Taiyo Yuden. These three companies were dissatisfied with the disposition and respectively filed for an administrative appeal. The Committee of Administrative Appeals of the Executive Yuan vacated and remanded the FTC's rulings and required the FTC reissue a proper ruling in accordance with the appeal decision in 2001.

The FTC further conducted new investigation, research, and analysis and remained its decision of disposition in its 544th Commissioners' Meeting on April 11, 2002. The said companies again did not accept the disposition and filed for a second administrative appeal which was dismissed by the Committee of Administrative Appeals. They later filed administrative litigation with the Taipei High Administrative Court which, in its decision, vacated both the "decision of the administrative appeal and original disposition," and ordered the FTC to make a proper disposition upon further investigation. (2003 Decisions Su-Tzu No. 00908, 01132, and 01214) The FTC was dissatisfied with this decision and filed an appeal to the Supreme Administrative Court which dismissed the appeal. The FTC again filed a second appeal which was also dismissed by the Supreme Administrative Court. The case was then submitted to the Commissioners' Meeting for a new disposition in accordance with the law and pursuant to the final decision of the Taipei High Administrative Court.

2. Findings of the FTC after investigation: These two parties were questioned and requested to provide information at the FTC. The FTC also dispatched personnel to visit and investigate the domestic CD-R manufacturers and their affiliates, such as Asia-Pacific Technology & Intellectual Property Service Inc. Additionally, the FTC asked the Electronics & Optoelectronics Research Laboratories of the Industrial Technology Research Institute to provide professional opinions. All facts investigated can be traced in the records. The FTC also referred to the opinions and decisions of the Taipei High Administrative Court and Taipei Supreme Administrative Court for its decision of disposition.

3. Grounds for disposition:

(1) Philips, Sony, and Taiyo Yuden stipulated the orange book standards and monopolized the CD-R technology market via their conduct of concerted licensing. With the conspicuously changed circumstances where the market scale of CD-R having large growth exceeding the original expectations, these three companies still would not allow any room for the licensees to negotiate and continued to maintain

the original calculation of licensing royalties. The undue fixing of licensing royalties violated Article 10(ii) of the FTL governing the prohibitions of monopolistic enterprises.

(2) Philips, Sony, and Taiyo Yuden failed to inform the licensees of relevant important trade information, such as patent contents, scope, and validity duration. They also used the urgent need of the domestic companies to obtain the license and requested these domestic companies to withdraw the exposure of invalid patents prior to the signing of the license agreement as the prerequisite of the agreement. These three companies indeed exploited their advantageous market position and violated Article 10(iv) of the FTL. As a result, administrative fines of 3.5 million, 1 million, and half million New Taiwan Dollars were imposed respectively on Philips, Sony, and Taiyo Yuden.

Summarized by Chen, Shu-Hua; Supervised by Wu, Lieh-ling □

Chapter 3

Merger

3.1 Non-Prohibited Cases

China Steel Corporation & Chung Hung Steel Corporation

898th Commissioners' Meeting (2009)

Case: China Steel Corporation and Chung Hung Steel Corporation filed a pre-merger notification to the Commission regarding its intention to merge

Key Word(s): steel plate, hot-rolled steel, cold-rolled steel

Reference: Fair Trade Commission Decision of January 21, 2009 (the 898th Commissioners' Meeting)

Industry: Basic Iron and Steel Manufacturing (2411-2414)

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

Summary:

1. China Steel Corporation (hereinafter referred to as CSC) originally holds 39.08% shares of Chung Hung Steel Corporation (hereinafter referred to as CHSC). Affected by global financial crisis, CHSC intends to issue seasonal equity offerings, in which CSC will purchase most of the shares. As a result, CSC will hold more than 50% of CHSC's shares after the purchase, constituting a merger under Article 6(1)(ii) and Article 6(1)(v) of the Fair Trade Law (FTL). In addition, CSC's market shares in domestic steel, wire and rod, hot-rolled steel coil, cold-rolled steel coil, electrical steel sheet, and zinc-coated steel coil have reached the threshold for pre-merger notification specified in Article 11(1)(ii) of the FTL. Also, CHSC's sales in the preceding fiscal year (2007) exceeds the amount for non-financial enterprises and reaches the threshold for pre-merger notification under Article 11(1)(iii) of the same law. Since exemptions under Article 11-1 do not apply, CSC and CHSC are required by law to file a pre-merger notification to the Commission.

2. The cold-rolled and hot-rolled steel products circulate internationally and face global competitions (e.g. large companies in China, Japan, Korea, USA, EU...). Under WTO, member countries import and export steel products with no tariffs imposed. If the merged enterprises increase product price at will (higher than market price in international market), companies in the lower-stream may import steel from foreign companies. Therefore, it is unlikely for the merged company to unitarily raise product or service price. CSC and CHSC had once filed for pre-merger notification in 1999. It was approved by the FTC 430th Commissioners' Meeting because the merger will not impede competitions in the cold-rolled and hot-rolled steel market; also, the merger is a strategic move in response to competitions in global steel market. At that time, CSC had a 50% market share in domestic cold-rolled and hot-rolled steel, while CHSC had a 15% in market share. The market structure then is similar to the market shares now. This application only involves changes in CSC's holding of CHSC shares. It will not affect current market structure for cold-rolled and hot-rolled steel and will not restrict competitions.

3. According to market share change and imports of hot-rolled and cold-rolled steels from 2003 to 2007, capacities of other enterprises and importers are relative flexible. Thus, this merger will not create entry barrier in relevant markets; besides, there are no evidence showing the merged enterprises and other competitions will engage in mutually-restrictive activities or concerted actions. As a result, the benefit in this case is likely to outweigh any disadvantages that might result from competition restraint. Therefore, the Commission approves the merger pursuant to Article 12(1) of the FTL.

Appendix:

China Steel Corporation's Uniform Invoice Number: 30414175

Chung Hung Steel Corporation's Uniform Invoice Number: 07838854

Summarized by Chen, Shu-Hua; Supervised by Wu, Lieh-ling

Oracle Taiwan LLC and Sun Microsystems, Inc.

930th Commissioners' Meeting (2009)

Case: Oracle Taiwan LLC filed a pre-merger notification regarding its intention to conduct an extraterritorial merger with Sun Microsystems, Inc. in accordance with Article 11 of the Fair Trade Law

Key Word(s): extraterritorial merger, database management, system, restrictive competition, market share, market concentration, cross-industry operation

Reference: Fair Trade Commission Decision of September 2, 2009 (the 930th Commissioners' Meeting)

Industry: Software Design Services (6201)

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

Summary:

1. Oracle Taiwan LLC (hereinafter referred to as Oracle) intended to conduct an extraterritorial merger via its newly-established subsidiary, Soda Acquisition Corporation, with Microsystems, Inc. (hereinafter referred to as Microsystems) as the surviving company. Oracle at the mean time would purchase Microsystems' stock in cash and become the sole stockholder of Microsystems. The act of Oracle to merge with Microsystems through its newly-established subsidiary and its holding of 100% of Microsystems' stock fell under the definitions of the "merger with another enterprise" and "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" as provided in Article 6(1)(i) and (ii) of the Fair Trade Law (FTL). In addition, Oracle possessed more than one-fourth of the market share in the database management system market of Taiwan and reached the threshold for the filing of the pre-merger notification set forth in Article 11(1)(ii) of the FTL without being subject to the exceptional circumstances set forth in Article 11-1. Oracle and Microsystems therefore filed a pre-merger notification in accordance with the law.

2. Restrictive competition evaluation of this merger case:

(1) Horizontal Merger: Oracle mainly engages in software design, research and development, manufacture, distribution, and related services. Microsystems on the other hand mainly engages in hardware sales providing software that is free or of minimum charges. The overlapping products upon the merger of Oracle and Microsystems are the database management system, middleware, and software developing tools. It was found that the merger of these two enterprises would bring no obvious changes to the market share and market concentration in the software-related markets of Taiwan. The new company would still be subject to the market competition and have no ability to raise product prices or service remunerations. Due to the facts that the changes to the market structure are quite limited after the merger and that there are numerous software products in the open and competitive markets of Taiwan, the merger would cause no harm to the market competitions and would not weaken the trading partners' ability to select the products or services of another company at all, nor their bargaining power when purchasing such products or services.

(2) Conglomerate Merger: Currently there are no domestic laws or regulations governing the restrictions or entry barriers with regard to software, hardware, and information technology services industries. The merger of Oracle and Microsystems would not have any impact on the competition in these markets. Relevant technology advancements would not make it difficult for other enterprises to engage in cross-industry operations of relevant products and services. With Oracle being engaged in software design, research and development, manufacture, distribution, and related services, and Microsystems in hardware sales, the merger of these two enterprises would allow Oracle to have a complete development plan of cross-industry operations. Moreover, there are numerous businesses in the domestic software, hardware, and information technology services markets. The merger should not have any substantive impairment on the competition in these markets.

3. In conclusion, this merger should be able to bring overall economic benefits that would outweigh the disadvantages resulting from the competition restraints.

Therefore, in accordance with Article 12(1) of the FTL, the FTC did not prohibit this merger.

Summarized by Lai, Mei-Hua; Supervised by Chen, Yuhn-Shan □

Taiwan Mobile Co., Ltd., Sheng-Ting, Kbro & 12 Cable Television Companies Controlled by Kbro

943rd Commissioners' Meeting (2009)

Case: Taiwan Mobile Co., Ltd. filed a pre-merger notification regarding its intention to merge with Sheng-Ting Co., Ltd., Kbro Co., Ltd., and 12 cable television companies controlled by Kbro

Key Word(s): cable television, 4C industry, digital convergence, last mile, required undertakings

Reference: Fair Trade Commission Decision of December 2, 2009 (the 943rd Commissioners' Meeting)

Industry: Telecommunications (6100), Cable Television System (6021)

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

Summary:

1. Taiwan Mobile Co., Ltd. (hereinafter referred to as Taiwan Mobile) intended to obtain 77% of stock of Sheng-Ting Co., Ltd. (hereinafter referred to as Sheng-Ting) through its subsidiary, Da-Fu Media Technology Co., Ltd. to control the business operations and personnel appointments of Sheng-Ting and its subsidiary, Kbro Co., Ltd. (hereinafter referred to as Kbro). Taiwan Mobile also intended to indirectly obtain Kbro's 88.36% of stock of 12 cable television companies in Da-An and Wen-Shan districts and control the business operations and personnel appointments of these companies. The goal was to make Taiwan Mobile the largest multiple system

operator (MSO) in the nation. Such intention of Taiwan Mobile constituted the merger type set forth in Article 6(1)(ii) and (v) of the Fair Trade Law (FTL). Due to the facts that the 16 cable television system operators participating in this merger case possessed more than one-third of the market share in their respective districts of operations; and that both Taiwan Mobile and Kbro reached certain amount of sales that was the threshold for the filing of the pre-merger notification set forth in Article 11(1) of the FTL without being subject to the exceptional circumstances set forth in Article 11-1, Taiwan Mobile filed a pre-merger notification in accordance with the law.

2. Findings of the FTC after investigation showed that this merger should have the following three major economic benefits: 1. having a breakthrough in the advantageous market position possessed by the leading companies for a long time in the fixed communications services market, known as the "last mile," and promoting the competition in the broadband network services; 2. promoting the development of digitalization of cable television which can help the development of the video media industry and provision of various selections to the consumers; and 3. integrating the resources of mobile, broadband, and cable television to provide renovated digital convergence services and benefit the development and competition of the digital convergence industry. At the same time, this case might give rise to the concerns of restricting competition by the applicants and their subsidiaries, such as exploiting their market power, causing market foreclosure, or increasing the level of difficulties for non-participants to enter into certain markets. However, after considering the future advancement of communications technologies, digitalization of cable television, fixed communications operators' participation in the competition of multimedia contents transmission services, convergence of 4C industry markets and services resulted from the digital convergence, and the existing governance by the relevant laws and regulations, the FTC believed that these concerns would be reduced to a certain degree in the future. At the same time, the FTC would require necessary undertakings, such as appropriate control of the structure and behaviors, to further ease the concerns about the restrictive competition.

3. Upon comprehensive considerations of the existing regulatory framework, relevant market structure and competition, evaluating opinions from various stakeholders, trend of future technological development, and maintenance of future market competitiveness after the digital convergence, it was found by the FTC that the overall economic benefits would outweigh the disadvantages resulting from the competition restraints. Therefore, in accordance with Article 12(2) of the FTL, the FTC did not prohibit this merger but will require additional undertakings. The ten undertakings imposed by the FTC were as follows:

(1) The applicant shall dispose of the entire stock of one of the cable television companies that is directly or indirectly controlled by the applicant within one year from the day after the receipt of this merger decision.

(2) The applicant and its subsidiaries shall not appoint any representative to serve as the president, supervisor, or general manager of Mangrove Cable TV Inc. within three years from the day after the receipt of this merger decision.

(3) The number of analog satellite radio and television programs the applicant and its subsidiaries produce, represent, or sell shall not be more than twenty-one within three years from the day after the receipt of this merger decision.

(4) Without justification, the applicant and its subsidiaries shall not refuse to license the satellite radio and television programs produced or represented by them to other cable television operators, live satellite broadcast television services operators, multimedia contents transmission services providers, or other competing cable or Internet channel services providers, or engage in other discriminative conducts.

(5) Without justification, the applicant and its subsidiaries shall not sell use a different price or attach additional conditions to license the satellite radio and television programs produced or represented by them to other cable television operators, live satellite broadcast television service operators, multimedia contents transmission services providers, or other competing cable or Internet channel services providers.

(6) The applicant shall submit the names of the satellite radio and television programs produced, represented, or sold by the applicant and its subsidiaries along with the representation agreement to the FTC by July 1 of each year within three

years from the day after the receipt of this Letter.

(7) The applicant shall submit information on the quotes, licensing prices, promotions, and sales targets of the satellite radio and television programs produced, represented, or sold by the applicant and its subsidiaries to the FTC by July 1 of each year within three years from the day after the receipt of this Letter.

(8) The applicant shall submit trade information, such as the retail and wholesale prices of the Internet services of the applicant or its subsidiaries and interconnection bandwidth costs with other major ISPs, to the FTC by July 1 of each year within three years from the day after the receipt of this merger decision.

(9) The applicant and its subsidiaries shall use the amount of communications as the calculation base or the mechanism for proper free interconnection with regard to the quotes of the bandwidth costs for the Internet of their cable television network system within six months from the day after the receipt of this Letter.

(10) The applicant and its subsidiaries shall perform the following tasks that are beneficial to the overall economic interest with regard to their cable television network system within three years from the day after the receipt of this merger decision: 1. completing the digitalization of cable television and two-way construction of the cable television system network; 2. establishing open common platforms that are beneficial to the digital convergence, such as "standard open network platform," "user interface of convergence," and "convergence platform of customer service" of telecommunications and cable television networks and services; and 3. participating in the competition by providing better prices, quantity, quality, services, or other trade conditions than existing ISPs with regard to the broadband Internet services market.

Appendix:

Taiwan Mobile Co., Ltd.'s Uniform Invoice Number: 97176270

Summarized by Chang, Tsai, Hui-Chi; Supervised by Liu, Chi-Jung

3.2 Prohibited Cases

Uni-President Enterprises Corporation & Weilih Food Industrial Co., Ltd.

879th Commissioners' Meeting (2008)

Case: Uni-President Enterprises Corporation filed a pre-merger notification to the FTC regarding its intention to directly hold more than one third of the shares of Weilih Food Industrial Co., Ltd.

Key Word(s): instant noodles, merger, market share

Reference: Fair Trade Commission Decision of September 10, 2008 (the 879th Commissioners' Meeting), Merger Letter Kung Jie Tzu No. 097005

Industry: Noodle Manufacturing (0892)

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

Summary:

1. This case originated from the situation that Uni-President Enterprises Corporation (hereinafter referred to as "Uni-President Corporation") made a pre-merger notification to the FTC, and the background of the situation stated briefly is as follows: Uni-President Corporation planned to indirectly hold 49.75% of the shares in Weilih Food Industrial Co., Ltd. (hereinafter referred to as "Weilih Company") through a subsidiary company. Such a merger fell under the types set forth in Article 6(1)(ii) of the Fair Trade Law (FTL), which provides that "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." Furthermore, the sales amount for the preceding fiscal year of Uni-President Corporation and of Weilih Company were NT\$ 46 billion and NT\$ 1.9 billion respectively, and the market share of these two companies in the market of instant noodles was 47.4% and 21.2% respectively. Therefore, on the basis of Articles 11(1)(ii) and (iii) of the FTL, Uni-President Corporation filed a pre-merger notification to the Commission.

2. Definition of market:

(1) Product market: It means the scope of goods or services that in terms of functionality, characteristics, purposes or prices, has a high degree of demand or supply substitutions. The product market involved in this merger should be defined as "the market of instant noodles, beverage, edible oils and fats, and health drinks.

(2) Geographic market: It means a region in which the merger parties supply particular goods or services, and the trading counterpart can select or switch to other suppliers easily. As there was no particular regional restriction on manufacturing, transportation, sales channels of the aforesaid instant noodles, beverage, oil and fat, and health drinks, the whole islands should be the geographic market in this case from the perspective of the existing domestic geographical environment, and transportation and communications factor.

3. Competition analysis after merger: The disadvantages resulted from competition restraint would outweigh the overall economic benefits of this merger. The reasons are as follows:

(1) This merger case would diminish the competitive function of the manufacturing market of instant noodles and affect consumers' benefits, it incurred disadvantages resulted from competition restraint: It showed that the market share of the merger parties in this case were the first and second largest enterprises respectively, and were each other's main competitor. After the merger, the mutual restraining power of the enterprises would be reduced, and the extent of the enterprises' mutual competitive pressure would be cut down. The reason for such phenomena was that with respect to unilaterally adjusting prices of products by one of these enterprises, the other enterprise's original anxiety over such an adjustment would be lessened. Such a cause would diminish the competitive function of the manufacturing market of instant noodles accordingly. With respect to the entry barrier, channels are key issue for the marketing of instant noodles, and any new entrant will not really easily and timely achieve the required time and the amount of capital for them. Moreover, it appeared that the domestic instant noodles market has inclined to be saturated, and even shrinking. Therefore, the size of the domestic instant noodles market is not

large enough for potential competitors to arrive at economy of scale. Accordingly, the possibility and time of potential competitors to enter into the market are very low and limited. Moreover, in this case, if the enterprises merge with each other, the room for chain retailers to negotiate prices with the merger parties must be affected; in the same way, it will be even harder to expect that traditional retail channels have the ability to suppress the merged parties from raising products' prices. Putting into practice the alleged merger would diminish the effect competition in the market, and incur a considerable disadvantages as a result of competition restraint.

(2) The economic benefits for the overall market or consumers, that might result from the merger was not conspicuous, and the merger of Uni-President Corporation and Weilih Company was unable to assure the materialization of these benefits: Uni-President Corporation alleged that it would not intervene in the operation and human resources of Weilih Company after the merger. Therefore, it would be difficult to believe that conspicuous benefits accruing from economies of scale would be resulted after the merger. In addition, the merging parties were not failing enterprises, so did not have the urgent need to speedily raise funds through the merger to assure businesses operation. In the same way, there was no evidence showing that Weilih Company will withdraw from the instant noodles market if the Commission does not approve this case. Let along the aforesaid points, the purposes of the alleged merger was mainly to let the merging companies exchange experiences with each other and to expand the overseas market. These companies, however, needed not achieve these purposes by means of Uni-President Corporation's acquisition of extra shares – the merger of Uni-President Corporation and Weilih Company was not the only way to achieve said purposes. Moreover, through the merger, the materialization of the situations, increasing the overall competitiveness of the nation, and promoting consumers' benefits, as alleged by Uni-President Corporation, was unable to be assured. Therefore, the overall economic benefits in this merger case were not conspicuous.

(3) In summary, it was still difficult for the Commission to believe that the overall economic benefits of the merger would outweigh any disadvantages that might result from competition restraint. Accordingly, the FTC prohibited the merger of Uni-

President Corporation and Weilih Company in accordance with Article 12(1) of the FTL.

Appendix:

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

Summarized by Chang, Chan-Chi; Supervised by Yang, Chia-Hui

3.3 Decisions

Four Cable TV System Operators in Kaohsiung City

893rd Commissioners' Meeting (2008)

Case: Four cable TV system operators in Kaohsiung City violated the Fair Trade Law by monopolizing the cable TV market in Kaohsiung City

Key Word(s): cable TV, MSO organization, cooperative operation, joint shift arrangement

Reference: Fair Trade Commission Decision of December 17, 2008 (the 893rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097163

Industry: Cable and Other Subscription Programming (6022)

Relevant Law(s): Articles 11(1) and 13(1) of the Fair Trade Law

Summary:

1. This case originated from the fact that media published that a foreign company was suspected of cornering four cable TV system operators in Kaohsiung City. The FTC therefore initiated an ex officio investigation on this case and found out that the cable TV system operators in northern Kaohsiung City were Ching Lian Cable TV Co., Ltd. (hereinafter referred to as "Ching Lian Company") and Clearvision CATV Ltd. (hereinafter referred to as "Clearvision Company"), while cable TV system operators in southern Kaohsiung City were Gang Du Cable TV Co., Ltd. (hereinafter referred to as "Gang Du Company") and Harborview Cable TV Co., Ltd. (hereinafter referred to as "Harborview Company").

2. Findings of the FTC after investigation:

(1) In this case, the FTC tracked down the "Table of MSO Organizational Arrangement and Allocation of Manpower of MSO Organization in Kaohsiung." Six major departments, Production Support Center, Customer Service Center, Financial Department, Broadband Business department, Engineering Department, and Administration Department, were established under the MSO organization and

were responsible for operating businesses of the four cable TV companies stated in the summary. Furthermore, the responsible persons of the related departments of the MSO organization covered the first-level supervisors of these cable TV companies, and the MSO organization mixed and arranged all employees of said cable TV companies into each business service group. The FTC also separately tracked down the engineering organization chart of the South-North of Kaohsiung City, and the chart even further recorded a detailed list of all engineering staff of the four cable TV companies.

(2) The FTC looked into the case and singly found out that with respect to sources of cable TV programs, the four cable TV companies all commissioned the same company to purchase programs for cable TV channels, while as regards the reception of signals, Clearvision Company and Harborview Company commissioned the other two cable TV companies to receive signals of programs, and they shared terminal systems; with respect to network engineering, said four cable TV companies held engineering meetings irregularly, and a joint shift arrangement occurred among their engineering staff and customer service personnel. The FTC also found out that with regard to other administrative items, these four cable TV companies made uniforms (for their employees) to manifest the entity, co-hosted an annual employees' dinner party, jointly arranged engineering insurance, and jointly used to dial specific voice message codes to communicate. In addition, supervisors of specific companies even used e-mail accounts of other companies, and certain companies kept bills, and information concisely and internally proposed by staff of other companies. Over and above the FTC's findings, the internal documents of the cable TV companies provided by the witness encompassed a detailed list of all engineering staff of the four cable TV companies, and the compiled information of detailed data being related to the business secrets of these cable TV companies. The provision of said compiled information of detailed data manifested that, without an organization to operate and give orders uniformly, there were hardly reasonable causes for a specific person to acquire and compile the related business secrets of the four cable TV companies.

3. Grounds for disposition:

(1) In accordance with the findings of FTC after investigation, the facts that the four cable TV companies had close cooperation of important businesses and usually jointly operated the businesses, had constituted the element set forth in Article 6(1) (iv) of the Fair Trade Law (FTL), and conformed to the threshold set forth for a pre-merger notification provided by Article 11(1) of the same law, as well as not falling within the exceptions to pre-merger filing, which were provided by Article 11-1 of the same law. However, these four cable TV companies did not make a pre-merger filing to the Commission and therefore violated Article 11(1) of the FTL.

(2) On the basis of Articles 13(1) and 40(1) of the FTL, the FTC ordered that the four cable TV companies should cease such a type of unlawful act immediately, and Ching Lian Company, Gang Du Company, Clearvision Company, and Harborview Company were imposed with an administrative fine of NT\$ 10,000,000, NT\$ 7,400,000, NT\$ 1,800,000, and NT\$ 1,400,000 respectively.

Appendix:

Ching Lian Cable TV Co., Ltd.'s Uniform Invoice Number: 97164582

Gang Du Cable TV Co., Ltd.'s Uniform Invoice Number: 97178452

Clearvision CATV Ltd.'s Uniform Invoice Number: 97175618

Harborview Cable TV Co., Ltd.'s Uniform Invoice Number: 16085834

Summarized by Chang, Hsin-Yi; Supervised by Liou, Chi-Jung

Uni-President Enterprises Corporation

901st Commissioners' Meeting (2009)

Case: Uni-President Enterprises Corporation violated the Fair Trade Law by failing to file a pre-merger notification before it directly or indirectly controlled the business operation or the appointment or discharge of personnel of Weilih Food Industrial Co., Ltd.

Key Word(s): instant noodle, substantial control, seats of directors

Reference: Fair Trade Commission Decision of February 11, 2009 (the 901st Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098035

Industry: Noodle Manufacturing (0892)

Relevant Law(s): Articles 6, 11 and 13 of the Fair Trade Law

Summary:

1. In the re-election for directors and supervisors of Weilih Food Industrial Co., Ltd. (hereinafter referred to as Weilih), Uni-President Enterprises Corporation (hereinafter referred to as Uni-President) won 3 seats of directors and 1 seat of supervisors, which in total constitute half of the seats of Weilih's directors and supervisors. In addition, Mr. Zhixian Luo (General Manager of Uni-President) will be the Chairman of Weilih. The Commission initiated an ex officio investigation on whether the enterprise failed to file a pre-merger notification.
2. Findings of the FTC after investigation: Three of the directors and one of the supervisors of Weilih that were elected are all managers working at Uni-President. Furthermore, there is an investment agreement between Uni-President and Weilih's major shareholders, in which the latter shall support and help the former to acquire seats in Weilih's directors and supervisors. In addition, the major shareholders of Weilih shall support the representative of Uni-President's second-layer subsidiary (who was elected a director of Weilih) to be Weilih's chairman.
3. Grounds for disposition

(1) To "directly or indirectly control the business operation or the appointment or discharge of personnel of another enterprise" is a type of mergers specified in Article 6(1)(v) of the Fair Trade Law (FTL). According to Article 11(1)(iii) of the same Law, where 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, such enterprises shall file a pre-merger notification to the central competent authority.

(2) To "directly or indirectly control the business operation or the appointment or discharge of personnel of another enterprise" means that an enterprise, directly or indirectly, may substantially influence another enterprise's decision to engage or not engage in certain business operation. The determination as to whether an enterprise has "substantial control" over another, including elements of the share holding and number or percentage of directors and supervisors, is evaluated case by case. Sometimes even though when an enterprise may not hold a certain percentage of shares or number of directors of another enterprise, by ways of keeping substantial control over another through financial dependency, information-sharing, veto rights, or other rights relevant to corporate governance, it still has substantial control over another enterprise's operational decisions, and such a merger may impede market competition.

(3) Uni-President assigned its certain personnel to be directors of Weilih, in name of representatives of Uni-President's affiliated companies. According to Article 27 of the Company Law, Uni-President may replace the three persons who were appointed directors of Weilih, owing to the change of his/her functional duties. Besides, those three persons are all managers at Uni-President. According to Article 33 of the Company Law, "a managerial personnel shall not make any change or alteration in any decision made by the directors or the executive shareholder(s), or any resolution adopted by the shareholders' meeting or the board or directors, or go beyond the scope of his/her duties and power when exercising his/her functional duties." According to Article 31 of Weilih's Articles of Incorporation, "the manager shall comply with resolutions of the Board of Directors to organize all corporate affairs. The appointment, discharge, and remuneration of managers shall be determined by the Board of Directors." Since Uni-President has substantial control over half of

the seats of directors, supervisors, and chairman of Weilih, it can influence Weilih thorough the above-mentioned persons.

(4) According to the Weilih's Articles of Incorporation, Weilih's Broad of Directors still controls its business operation and the appointment or discharge of personnel. Furthermore, Uni-President claimed that personnel it appointed to be the directors of Weilih would supervise the latter not to engage in unrelated investments and focus on the instant noodles business. Therefore, it is fair to conclude that the directors of Weilih appointed by Uni-President substantially affect Weilih's decision to engage or not engage in certain operation or investments. In addition, Article 18 of Weilih's Articles of Incorporation provides that resolutions of the Board of Directors shall only be adopted by a two-thirds of the directors at a meeting attended by a majority of the directors. Since Uni-President holds half of the seats for Weilih's directors, the assembly and resolution of Weilih's Board of Directors will depend on the attendance and consent of Uni-President's representatives. The attendance and consent of Uni-President's representatives is thus crucial to the operation of Weilih's Board of Directors. Since Weilih and Uni-President are competitors and now that Uni-President holds half of the director seats in Weilih, should Weilih impose a strategy that is harmful to Uni-President, such decision may not be approved and executed by Weilih's Board of Directors. This shows that Uni-President indeed has material influence over Weilih's operational decisions. Therefore, the fact that Uni-President acquired half seats of Weilih's directors and supervisors suggests that the former has certain control over the latter's material operational decisions.

(5) In sum, with respect to the case where the staff of Uni-President acquired half the seats of directors and supervisors and become the chairman of Weilih, it constitutes a merger under Article 6(1)(v) of the FTL. The merged enterprises have exceeded the threshold to file a pre-merger notification. According to Article 11(1) (iii) of the FTL and Article 7(1) of the Enforcement Rules to the FTL, Uni-President shall file a pre-merger notification to the Commission prior to the merger. It failed to comply with the law and has violated Article 11(1) of the FTL. In addition, pursuant to Article 13(1) and Article 40(1) of the same Law, personnel who hold positions in both Uni-President and Weilih shall be discharged until there is no substantial

control, and an administrative fine of NT\$ 500,000 is imposed.

Appendix:

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

Summarized by Chang, Chan-Chi; Supervised by Yang, Chia-Hui

Dafeng TV Ltd. & DigiTai TV Ltd.

922nd Commissioners' Meeting (2009)

Case: Dafeng TV Ltd. and DigiTai TV Ltd. violated the Fair Trade Law by failing to file a pre-merger notification

Key Word(s): cable TV, joint venture, illegal merger

Reference: Fair Trade Commission Decision of July 8, 2009 (the 922nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098096

Industry: Cable and Other Subscription Programming (6022)

Relevant Law(s): Articles 11 and 13 of the Fair Trade Law

Summary:

1. An complainant reported the following matters regarding Dafeng TV Ltd. (hereinafter referred to as Dafeng) and DigiTai TV Ltd. (which used to be Hai Sun Cable Broadcasting System Co., Ltd, hereinafter referred to as DigiTai). They have the same fee structure, share common engineers, and both affixrd the wording "Araedis" on their uniforms and cars. Digital set top boxes provided by the two companies are interchangeable, just as if the two companies were merged. The companies were suspect of violations against the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) Dafeng and DigiTai are the only 2 cable TV operators in Panchiao District, Taipei County. The market share of each entity is 44% and 56% respectively; the percentages remain almost the same during 2006 to 2008.

(2) Shareholding structure: Dafeng and DigiTai each hold 20% of Araedis Broadband Ltd. (hereinafter referred to as Araedis) since June 14, 2004, and they have become Araedis's largest shareholders ever since. Dafeng holds 21.07% of DigiTai, and DigiTai Holds 10.35% of Dafeng.

(3) Directors and Supervisors: the three companies do not have same directors or supervisors according to the list of directors and supervisors in 2007 and 2009. However, DigiTai has kept one seat of Araedis's three directors, and Dafeng has become Araedis's only supervisor ever since June 14, 2004.

(4) Operation

(i) Common digital head-ends: Dafeng and DigiTai rent head-end digital equipments from Araedis. The two cable TV companies then provide analog signals of channel programs to Araedis, and the latter will compress analog signals into digital signals through its digital facilities. Signals are transferred to TV viewers through optical fibers and coaxial owned by the 2 cable TV companies. The viewers can then decode the signals using Digital Set Top Boxes provided by Araedis.

(ii) Common trademark: Dafeng has licensed the use of its trademarks to Araedis for free in order to promote business and create common brand image. On the other hand, it also agreed verbally to lend trademarks to DigiTai for the potential merger. Although the merger plan was suspended, it did not take action to terminate trademark licensing.

(iii) Common service center: Araedis, Dafeng and DigiTai set up their service centers together in a same location for the installation and removal of cable TV and broadband internet. Araedis has been in charge of actual operation and marketing, using Dafeng's trademarks and Araedis's signboard.

(5) Channel programs: As of April 2009, a total of 92 channels could be downloaded from the analog channel list on Dafeng and DigiTai's websites, among which only 5 were different (channel 82 to channel 86). There were 135 digital channels available (including on demand channels), including 22 on demand channels

that were not available through analog signals. Except for Channel 45, the rest were all the same.

3. Grounds for disposition: Dafeng and DigiTai set up a joint venture to compress, transmit, and decode digital TV signals. They also share trademarks and other customer services. Therefore, the digital TV services they offer are identical. In addition, the two companies have more than 50% of digital users in total, and the market shares since 2004 are roughly the same. It is clear that the long term cooperation has led to a single identify for the two companies. As a result, they do not compete in the market and lack incentive to maximize economic benefits, thus damaging market competition. The qualifications stipulated in Article 6(1)(iv) of the FTL are met, and the two companies should have filed a pre-merger notification pursuant to Article 11(1) of the same law since exemptions under Article 11-1 do not apply. The two companies failed to file a pre-merger notification to the FTC. Their act thus violated Article 11(1) of the said law. A disposition is imposed pursuant to Article 13(1) and Article 40(1) of the FTL. Dafeng and DigiTai were each imposed an administrative fine of NT\$ 2,000,000 and ordered to make corrections.

Appendix:

Dafeng TV Ltd.'s Uniform Invoice Number: 96974228

DigiTai TV Ltd.'s Uniform Invoice Number: 97164529

Summarized by Chang, Hsin-Yi; Supervised by Liou, Chi-Jung

Chapter 4

Concerted Action

4.1 Decisions

Tofu Association of Kaohsiung City

875th Commissioners' Meeting (2008)

Case: Tofu Association of Kaohsiung City violated the Fair Trade Law by adjusting prices of traditional firm tofus

Key Word(s): concerted action, specific market, price reference

Reference: Fair Trade Commission Decision of August 13, 2008 (the 875th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097107

Industry: Business Associations (9421)

Relevant Law(s): Articles 7 and 14 of the Fair Trade Law

Summary:

1. The case originated from the fact that on July 31, 2008, the FTC received a complaint stating that the market buzzed about that the price of tofus in Kaohsiung City would go up on August 1, 2008, and the Tofu Association of Kaohsiung City was suspected of intervening and leading the raise.

2. Findings of the FTC after investigation:

(1) As prices of raw materials such as soybeans, and fuel oil were rising, the members of the Tofu Association of Kaohsiung City felt that business operation was difficult. Therefore, the association held a meeting of directors and supervisors on July 19, 2008, and invited each member to participate in the meeting. The meeting made a resolution to adjust the sales prices, NT 50 for each slab of 16-squared tofu, NT\$ 70 for each slab of 20-squared tofu, and NT\$ 80 for each slab of 25-squared tofu, from August 1, 2008. After the meeting, the association notified each member of the same trade by its letter.

(2) After conducting an investigation and an onsite inquiry about the abovementioned matter on tofu dealers in Kaohsiung, the FTC found out that the suppliers of traditional firm tofus in the area were members of the Tofu Association of Kaohsiung City. Supplying enterprise has indicated that the association did hold meetings for discussion and some of the suppliers indeed raised prices.

3. Grounds for disposition:

(1) Article 7(4) of the Fair Trade Law (FTL) provides that "restricting activities of enterprises by means of the association's charter, a resolution of a general meeting of members or board meeting of directors or supervisors, or any other means, is also deemed as a horizontal concerted action as used in Paragraph 2." Therefore, where an association restrains enterprises' activities by means of its charter, or a resolution of a general meeting of members or board meeting of directors or supervisors, and such an act is sufficient to affect the supply and demand in the market, the association's restraint on enterprises' activities is in violation of the FTL which prohibits concerted actions.

(2) Definition of market: This case was about that the meeting of directors and supervisorsof the Tofu Association of Kaohsiung City resolved on adjusting sales prices and notified all the members. Although the content of the resolution encompassed traditional firm tofus and bean curd, the main businesses of members of the association are to produce traditional firm tofus, and only a few members manufactured bean curd. Therefore, the product involved in this case should be traditional firm tofu. Furthermore, as traditional firm tofu breaks apart and goes off very easily, and transporting for a long distance is not favorable, as well as the area where each member sold such a type of tofu was mainly in Kaohsiung. Thus, the market in this case should be delineated as "the market of traditional firm tofus in Kaohsiung."

(3) Action subject: In accordance with Article 2(iii) of the FTL, an association is deemed as an enterprise. Furthermore, Article 7(4) of the FTL provides that "restricting activities of enterprises by means of the association's charter, a resolution of a general meeting of members or board meeting of directors or supervisors, or

any other means, to restrict activities of enterprises is also deemed as a horizontal concerted action as used in Paragraph 2." Accordingly, an association can be an action subject of a concerted action. The entity holding the 1st meeting of the 10th directors and supervisors for discussion and resolution on adjustment of sales prices of traditional firm tofus was the Tofu Association of Kaohsiung City. Therefore, the association should be recognized as an action subject of this case.

(4) Way of forming concerted action and content of concerted action: The findings of the FTC after investigation showed that the Tofu Association of Kaohsiung City discussed and resolved to adjust sales prices of traditional firm tofus in the 1st meeting of its 10th directors and supervisors meeting on July 19, 2008. With the aim of coping with the price-ups of raw materials and fuel, the association also issued letters to notify each of its members after the meeting. The association also admitted such affairs and its admission was on record. In the same way, Letter Kao-Shih-Tou-Pin-Tzu No. 08 issued by the association could be taken as evidence of the aforesaid affairs. The findings also showed that the content of the association's resolution to adjust the sales prices, NT 50 for each slab of 16-squared tofu, NT\$ 70 for each slab of 20-squared tofu, and NT\$ 80 for each slab of 25-squared tofu, from August 1, 2008. Therefore, the content of the abovementioned resolution involved in a determination of prices of the product, and such an act of the Tofu Association of Kaohsiung City was an act that restrained business activities.

(5) Impact of concerted action on market: On the basis of the content of the statement made by the Tofu Association of Kaohsiung City, its members supply approximately 80% of tofus in the market of Kaohsiung City. Also, the findings of the FTC showed that some members of the Tofu Association of Kaohsiung City did, as a result of the facts that the directors and supervisors meeting of the association made the resolution in casu and the association issued letters to its members, raised prices of tofus on August 1, 2008. Although members of the association indicated that the association would not restrain or punish members which/who did not comply with the resolution, and dealers indicated that some members had not followed the resolution to adjust the prices. Thus, it would be difficult to recognize that the association's resolution in casu was enforceable. Nevertheless, the FTC weighed and

considered the point that the Tofu Association of Kaohsiung City resolved to adjust prices due to price-ups of each cost, it found that the resolution on prices in casu had, however, clearly had an appearance of a concerted action. In the same way, with respect to the fact that the association issued the resolution in casu to each member, although the association had not had the regime or capability of supervising sales prices of its members, the act might still make its members adjust sales prices on the basis of its resolution, which might increase dealers' cost, and raise retail prices of traditional firm tofus. As a result of the aforesaid possibilities, rights and benefits of the consuming public would be affected. These possibilities should be recognized as risks sufficient to affect the supply and demand in the market.

(6) In conclusion, the fact that the Tofu Association of Kaohsiung City adjusted prices of traditional firm tofus by the resolution reached in the meeting of directors and supervisors was sufficient to affect the traditional firm tofus market in Kaohsiung, and the Commission found that such an act of the association violated Article 14(1) of the FTL, which prohibits concerted action. Accordingly, the association was ordered to cease the unlawful act in accordance with the fore part of Article 41 of the same law, and an administrative fine of NT\$ 200,000 was imposed.

Summarized by Chang, Chan-Chi; Supervised by Yang, Chia-Hui □

Taoyuan County Trade Union of Personnel Engaging in Land Transaction

877th Commissioners' Meeting (2008)

Case: Taoyuan County Trade Union of Personnel Engaging in Land Transaction violated the Fair Trade Law by stipulating a reference fee table of members' practices

Key Word(s): land, trade union, reference table

Reference: Fair Trade Commission Decision of August 27, 2008 (the 877th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097119

Industry: Scrivener's Services (6912)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The Commission was informed that the Taoyuan County Trade Union of Personnel Engaging in Land Transaction (hereinafter referred to as "Taoyuan County Trade Union of Land Personnel") formulated a reference table of collection of fees of members' practicing and issued it to its members. The FTC hence conducted an ex officio investigation of the case.

2. Findings of the FTC after investigation: In 1996, the Taoyuan County Trade Union of Land Personnel referred to the "Professional Practitioners' Revenue Standards Adjusted by Tax Authorities" stipulated by the Ministry of Finance and formulated approximately 30 items, such as handling charges, charges for registration of land or building ownership transfer (exchange), and building tax transfer, that were differentiated in detail on the basis of the characteristics of cases handled by land transaction engaging personnel, and stipulated the reference standards of collection of fees. However, due to the charges of "Professional Practitioners' Revenue Standards Adjusted by Tax Authorities" stipulated by the Ministry of Finance were higher than the standards set by the reference table of collection of fees formulated by the trade union and recent inflation. The 6th meeting of the 7th board of directors

of the Taoyuan County Trade Union of Land Personnel passed the amendment of the reference table of collection of fees for members' practices in July 2007. The reference standards of collection of fees for 13 items were raised by NT\$ 1,000 approximately, and the item of conversation fee for NT\$ 2,000 per hour was added.

3. Grounds for disposition:

(1) As members of the Taoyuan County Trade Union of Land Personnel are agents who/which help register, transfer, or apply for transcriptions for a land or building. The trade union is an organization established in terms of the Labor Union Law. That is, the organization is a union consists of laborers who provide services independently, and itself provides services. Therefore, members of such a trade union or the union itself has fallen under the definition of the term "enterprise" as provided by Article 2(iv) of the Fair Trade Law (FTL).

(2) The Taoyuan County Trade Union of Land Personnel has considerable market power, as the percentage of its members who are actually registered and practicing land administration personnel among the total registered and practicing personnel in Taoyuan was approximately 29%. In the same way, after the trade union resolved to modify the reference table of collection of fees of members' practices in the board of directors meeting, it published in the Journal of Real Estate Legal Writers Issue No. 227 on August 1, 2007 the content that "the union has modified 'the reference table of collection of fees of members' practices,' and members can access to it in the union." Furthermore, the Commission sent out investigators to visit the business places of the union's members and found out that the reference table of collection of fees of members' practices stipulated by the union was hung or displayed on the wall of the business places of some of the members, and some other members collected fees by referring to the said reference table and then negotiated fees with consumers. These findings showed that the reference table formulated by the Taoyuan County Trade Union of Land Personnel had been referred to by the union's members, and these facts were sufficient to affect the function of the land transaction brokerage services market in Taoyuan. As a result, the trade union violated Article 14(1) of the FTL, which prohibits of concerted actions. Accordingly, the Commission ordered

the Taoyuan County Trade Union of Land Personnel to cease such an unlawful act immediately and imposed an administrative fine of NT\$ 200,000 on it in accordance with the forepart of Article 41 of the same law.

Summarized by Lai, Mei Hua; Supervised by Chen, Yuhn Shan

The Bicycles Associations of Tainan Tainan City and Kaohsiung City

887th Commissioners' Meeting (2008)

Case: The Bicycles Associations of Tainan City and Kaohsiung City violated the Fair Trade Law respectively by concluding a "Reference Wage List for Bicycle Assembly and Repair"

Key Word(s): bicycle, association, reference wage list

Reference: Fair Trade Commission Decision of November 5, 2008 (the 887th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097143, Disposition Kung Ch'u Tzu No. 097144

Industry: Business Associations (9421)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. Since the second half of year 2008, the demand for bicycles was tending to increase due to the rising oil prices, and the trend of energy saving and carbon reduction in early 2008. The public made some negative opinions on rising prices of bicycles and their components. In the same way, the public complained to the FTC anonymously about the Tainan City Bicycles Association's conclusion of a price table of bicycle repair with the aim of impeding bicycle-trading stores to collect repair fees on the basis of the price table. Since the public did not provide names of relevant bicycle trading stores, the FTC initiated an ex officio investigation on it to see if such

a table could possibly affect competition in the bicycle assembly and repair market, and impair rights and interests of consumers.

2. Findings of the FTC after investigation: According to the on-the-spot investigation conducted by the Commission, the Tainan City Bicycles Association admitted to the following facts: in July and August, 2007, the increasing costs of bicycle parts compressed profits of bicycle assembly and repair businesses, so the members requested the Tainan City Bicycles Association to refer to the reference table made by the Kaohsiung City Bicycles Association. As a result, in the 6th meeting of the 25th directors and supervisors held on July 18, 2007, the association resolved to formulate the "Reference Wage List for Bicycle Assembly and Repair by the Tainan City Bicycles Association." On September 1, 2007, the said list was distributed to the members. On the other hand, the Kaohsiung City Bicycles Association indicated that in order to solve the disputes between consumers and stores, it took opinions from its members, and consumers, synthesized these opinions, and negotiated with the board of directors and supervisors. Then the Association formulated the "Reference Wage List for Bicycle Assembly and Repair by the Kaohsiung City Bicycles Association" and sent to the members on November 1, 2006.

3. Grounds for disposition:

(1) There were 74 member enterprises in the Tainan City Bicycles Association. It was about two thirds of the total number of bicycles enterprises in Tainan City. Moreover, the percentage of the total number of 139 member enterprises in the Kaohsiung City Bicycles Association to the total number of bicycles enterprises in Kaohsiung City were approximately 95%. The FTC considered that, although the two associations resolved to formulate reference wage tables for bicycle assembly and repair because of increasing costs, or solving the disputes between consumers and stores, the acts in casu clearly had appearances of concerted actions. With respect to the fact that these two associations sent the reference wage tables in casu to their members respectively, though it had not, at that time. Although they didn't put into practice the regime of supervising sales prices of members, and there were

enterprises which determined assembly and repair charges for some components according to their own costs and consumer groups, these tables might still make members of these two associations adjust prices on the basis of the resolutions of the associations respectively, and further affect rights and benefits of consuming public of Tainan City and Kaohsiung City. These risks should be believed to be sufficient to affect the supply and demand of the bicycle assembly and repair market in Tainan City and Kaohsiung City respectively. Thus, the associations' acts were found to violate Article 14(1) of the Fair Trade Law (FTL), which prohibits concerted actions. Accordingly, these two associations should cease the unlawful acts immediately and an administrative fine amounting to NT\$ 100,000 was imposed on each of them pursuant to the fore part of Article 41 of the FTL.

Summarized by Lin, Hui-Mei; Supervised by Wu, Lieh-Ling □

Yong Chien Advertised-Drug Association & Advertised-Drug Manufacturer Association

895th Commissioners' Meeting (2008)

Case: "Yong Chien Advertised-Drug Association" and "Advertised-Drug
anufacturer Association" violated the Fair Trade Law by jointly
maintaining the price of advertised-drugs sold by local radio stations

Key Word(s): Yong Chien Association, manufacturer association, advertised-
drug, concerted action

Reference: Fair Trade Commission Decision of December 31, 2008 (the
895th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.
098021, Disposition Kung Ch'u Tzu No. 098022

Industry: Drugs and Medicines Manufacturing (2002), Chinese Medicines
Manufacturing (2004), Wholesale of Pharmaceutical and Medical
Goods (4571), Retail Sale of Pharmaceutical and Medical Goods in
Specialized Stores (4751)

Relevant Law(s): Articles 7 and 14 of the Fair Trade Law

Summary:

1. In April 2006, a pharmacy in the Kaohsiung-Pingtung area sent a video disk containing the regular meeting of Yong Chien Advertised-Drug Association (hereinafter referred to as YCAA) and complained the following matters: the said association may engage in monopolizing the advertised-drug market in Kaohsiung-Pingtung area and the association also restricted retail price of drugs advertised by local radio stations. In addition, the Commission found that suppliers of the advertised-drugs in Kaohsiung-Pingtung area participated the regular meeting and paid annual fees to the above-mentioned "YCAA." Those suppliers set up an "Advertised-drug Manufacturer Association" (hereinafter referred to as AMA) and may have restricted product resale price or violated the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) YCAA

(i) There is a president for YCAA and the president appoints 16 of the members. The 17 people compose a "Committee" which meets once a month to determine core matters for YCAA. A regular meeting of YCAA is convened every 2 months to report, discuss and approve matters resolved in the Committee meeting. YCAA offers transportation fee to encourage members' participation and members are charged a NT\$ 30,000 security deposit to ensure their compliance of YCAA's resolutions. YCAA members will be punished or forced to exit YCAA if they fail to comply with the resolution. The president of YCAA also assigns members to form a supervisor team. The team will buy products experimentally from members to avoid price-cut or product leak. If a member was found to engage in product price-cut or resale to non-members, it will get a warning for the first instance, a 3-month supply cut for the second instance, and a 1-year supply cut for the third instance.

(ii) YCAA discussed and resolved the following matters during its regular meeting on March 5, 2006: (1) Tokyo Pharmacy is punished for failing to sell products at the price set by the manufacturer; (2) The manufacturers cut the supply to Dechang Pharmacy for a year for violations; (3) Tiende Pharmacy was fined by YCAA

Committee for violations; (4) any product resale to any other branches shall be approved by drug manufacturers, and each branch shall pay the annual fee of NT\$ 3,000; (5) the President will convene a Committee meeting to adjust YCAA's 2004 "Recommended Price List." The modified list will be printed and sent to members afterwards; such list serves as the basis for experimental buying and member's sale price.

(2) AMA

AMA is an organization composed of advertised drug suppliers in the Kaohsiung-Pingtung area. Members of AMA usually exchange information and resolve disputes in the advertised-drug market through lunch or dinner meetings. AMA uses YCAA to convey or execute its resolutions. It requests YCAA members to refrain from price competition, product resale and product referral. Pharmacies in the lower-stream market are given a fixed resale margin and constrained in price competition for drugs with different brands. If lower-stream pharmacies engage in price competition, product resale, or product referral, then they will be punished by supply cut or fines. To prevent lower-stream pharmacies from price and brand competition, AMA also reviews the "application form for new YCAA membership recommended by AMA" as well as pharmacies and branches enrollment to YCAA.

3. Grounds for disposition:

(1) YCAA

(i) Advertised-drugs are usually sold through the way that suppliers interact with consumers through radio programs. Therefore, they create awareness and loyalty in certain consumer groups. In addition, a company needs to be approved and undertake certain obligations in order to become an YCAA member. Some companies even request to reinstate after being punished by the association. It is obvious that YCAA is influential on the retail market of advertised-drugs in the Kaohsiung-Pingtung area.

(ii) In YCAA's regular meeting on March 5, 2006, a consensus among meeting attendees was reached for prices in the "Recommended Price List" printed in 2004. Later, YCAA inspected whether members follow the rules. Those who conduct price competition, "product resale" or "product referral" will be fined or discharged.

Other measures were also taken to guarantee compliance with no price cut, no product resale, and no product referral. That is, the Committee and its regular meetings resolved that members shall pay annual fee and security deposit to assure compliance. Pressured by YCAA and prohibited from product resale and product referral, members of YCAA all agreed to restrain from discount promotion and to mutually maintain the product price. Such actions was sufficient to affect demand and supply of advertised-drug market in the Kaohsiung and Pingtung area. It violated Article 14(1) of the FTL regarding prohibition on concerted actions.

(2) AMA

(i) In order to avoid price competition in "designated pharmacies" with overlapped sales scope, AMA members would jointly cut the supply and review the application to YCAA by pharmacies or branches. The purpose was to restrict pharmacies in the lower-stream market from competition in price or brand. In addition, many AMA members promoted advertised-drugs in radio stations and items sold through the channel of radio stations by AMA members constitute 43.67% of all advertised-drugs during the survey period. AMA members were indeed influential on the advertised-drug market in the Kaohsiung and Pingtung area.

(ii) AMA members, regulated by its association, reached the consensus to restrict business activities in the lower-stream market. Such an action was sufficient to affect demand and supply of advertised-drug market in the Kaohsiung and Pingtung area. It violated Article 14(1) of the FTL regarding prohibition on concerted actions.

(3) The FTC resolved that 53 pharmacies under YCAA and 16 drug suppliers under AMA were to be imposed with an administrative fine respectively. The total amount of the fines imposed was NT\$ 101.95 million.

Appendix:

Gainwise Industrial Limited's Uniform Invoice Number: 23865441

Black Elephant Medical Co., Ltd.'s Uniform Invoice Number: 97061690

Deli Co., Ltd.'s Uniform Invoice Number: 69519681

Jianmei Medical Co., Ltd.'s Uniform Invoice Number: 84728217

Wu Liaw Enterprise Co., Ltd.'s Uniform Invoice Number: 86444469

Baoninneng Enterprise Co., Ltd.'s Uniform Invoice Number: 97193257
Lu Wang International Co., Ltd.'s Uniform Invoice Number: 12789410
Concern Biotech Corp.'s Uniform Invoice Number: 80451527
Heqi Medical Co., Ltd.'s Uniform Invoice Number: 84605622
Daitien Medical Co. Ltd.'s Uniform Invoice Number: 80435999
Ou Chii Ney Woa Ltd.'s Uniform Invoice Number: 16121698
Shenshenghua Enterprise Co., Ltd.'s Uniform Invoice Number: 12619582
Yiyang Enterprise Co., Ltd.'s Uniform Invoice Number: 89752377
Sanbaofe Medical Co., Ltd.'s Uniform Invoice Number: 70514283

Summarized by Lin, Hsiao-Hung; Supervised by Lin, Gin-Lan □

Tainan City Excavator & Bulldozer Operators Union

897th Commissioners' Meeting (2009)

Case: Tainan City Excavator & Bulldozer Operators Union violated the Fair Trade Law by formulating a price table of heavy-duty machines and tools

Key Word(s): union, price table of heavy-duty machines and tools

Reference: Fair Trade Commission Decision of January 14, 2009 (the 897th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098016

Industry: Rental and Leasing of Construction Machinery and Equipment (7711)

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

Summary:

1. Tainan City Excavator & Bulldozer Operators Union (hereinafter referred to as TCEBOU) was reported to have raised fee standards for excavator and bulldozer service (including rent for machine and manual fee) since July 1, 2008. This has

become a burden to the construction industry. The complainant also attached the 2008 price table of heavy-duty machines and tools stipulated by TCEBOU. Since its violation of the Fair Trade Law (FTL) was obvious, the Commission investigated on the case.

2. Findings of the FTC after investigation:

(1) The members of TCEBOU charges service fees to excavate carry, level, and squeeze earth's surface, hills, and river banks through heavy machinery, excavator & bulldozer designed for construction works. Currently, there are about 360 members of TCEBOU, approximately 60-70% of excavator & bulldozer operators in Tainan City.

(2) During the eleventh 4th-term Directors and Counselors Meeting on April 11, 2005, TCEBOU formulated its 2005 price table of heavy-duty machines and tools. The 2005 table had not been modified for years. As international prices for crude oil, steel and other raw material roar, members requested to adjust the price table. The first 5th-term Provisional Directors and Counselors Meeting thus was held at Laoyou Restaurant (No. 268, Shengli Rd., Tainan City) on June 3, 2008 and resolved a new price table of heavy-duty machines and tools. In June 2008, TCEBOU notified members and construction enterprises in the lower-stream market that the new price table will take effect since July 1, 2008.

(3) Although TCEBOU did not monitor whether members comply with the price table of heavy-duty machines and tools, and members can determine the price based on trading conditions, members were indeed requested to raise the rental price for heavy-duty machines and tools since July 1, 2009. This affected the interests of renters for heavy-duty machines and tools and was sufficient to affect the market function of supply and demand of lease services of heavy-duty machines and tools.

3. Grounds for disposition: TCEBOU formulated its 2005 price table of heavy-duty machines and tools in year 2005. It also convened a Provisional Directors and Counselors Meeting on June 3, 2008 to raise the rental price for heavy-duty machines and tools. Its 2008 price table of heavy-duty machines and tools was later formulated

and TCEBOU notified its members and construction enterprises in the lower-stream market regarding the 2008 price table of heavy-duty machines and tools. Its above acts were sufficient to affect the market function of supply and demand of lease services of heavy-duty machines and tools. Therefore, it violated Article 14(1) of the FTL for the prohibition of concerted action. The union was ordered to cease the aforesaid unlawful act and an administrative fine of NT\$ 100,000 was imposed pursuant to Article 41 of the same law.

Summarized by Hung, Chin-An; Supervised by Sun, Ya-Chuan

Taichung City & 3 other Chinese Medical Associations

908th Commissioners' Meeting (2009)

Case: Taichung City and 3 other Chinese Medical Associations violated the Fair Trade Law by conducting in concerted action that regulated the "2007 Plan Controlling the Amount of Chinese Medical Doctors in the Central Region"

Key Word(s): Chinese Medical Association, global budget system, national health insurance

Reference: Fair Trade Commission Decision of April 1, 2009 (the 908th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098057

Industry: Professional Associations (9422)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. A report was filed to the FTC, during 2007, that Chinese Medical Associations in Taichung City, Taichung County, Nantou County, and Changhua County held joint counselors and directors meeting on February 14, 2007. The associations resolved that in addition to basic member fees, Chinese medicals now also have to pay a NT\$

300,000 as "exit funds."The entry barrier was imposed to control the number of Chinese medicals and might violate Article 14 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation

A. Chinese Medical Associations in Taichung City, Taichung County, Nantou County, and Changhua County stipulated the"2007 Plan Controlling the Amount of Medical Doctors in the Central Region"together on February 14, 2007. The contents include: 1. New hospitals, clinics, or cross-region doctors shall pay additional equity funds besides the member fees and opening expense. This also applies to Chinese medical doctors who practice medicine in the central region after graduation or passing the Chinese medical exam, provided that those assigned to a existing position or practice in other areas need not pay the additional equity fund. 2. Proceeds of the equity fund: if the number of Chinese medical doctors per 10 thousand people in the Central Region exceeds 1.6 times the number Chinese medical doctors per 10 thousand people in the whole bureau, then all hospitals and clinics will be encouraged to terminate the contracted health insurance through subsidies from the fund. 3. Effective from February 15, 2007 to December 31, 2007.

B. The four associations impose the control plan in response to the"2007 Trail Project for Chinese Medical Clinical Payments and Budget Allocation for General Departments"by the Department of Health of the Executive Yuan. Under the said project, if the following condition is met, where the number Chinese medical doctors per 10 thousand people in the Central Region exceeds 1.6 times the number Chinese medical doctors per 10 thousand people in the whole bureau for two successive seasons, then the trial project will be suspended. In order to avoid reaching the above condition for Chinese medical doctors in the Central Region and avoid the termination of project, the four associations stipulate the plan to control the number of Chinese medical doctors.

3. Grounds for disposition:

A. Since 1998, Department of Health of the Executive Yuan initiated the global budget payment system for various medical divisions. As for Chinese medical clinic,

only the eastern region receives a fixed percentage, while the rest five regions will get payments based on actual percentage under certain standards; the standards are subject to changes: prior to 2005, the number of insured in each region is the main index; however after 2006, the actual supply of medical service becomes the major index. There will be a seasonal evaluation based on certain formula, and the results will determine the total payments. Under the current budget allocation for Chinese medical clinic, after the central region receives the total amount for medical expenses, it shall report the average conversion factor based on the total medical service and then multiply it by the amount of service by individual Chinese medical or hospital for the payment. Thus, there are competitions among Chinese medicals in the central region.

B. The four associations regulated the "2007 Plan Controlling the Amount of Medical Doctors in the Central Region." On one hand, it builds an entry barrier by increasing the equity fund and impeding the number of new doctors; on the other hand, if there are too many Chinese medical doctors, the fund incentivizes hospitals in the Central Region to terminate contracted health insurance or move to other areas through subsidies in order to lower the number of medicals. Non-market factors are imposed to encourage business exit the market. Even though the associations alleged the plan to be a response to the unreasonable global budget payment system and conversion factor under the national health insurance, the Department of Health and Bureau of National Health Insurance have already indicated that they have not set other measures to avoid violations to the condition terminating the trial project. As a result, the action by the four associations did not comply with the policy of the Department of Health and has not been approved; thus, it cannot be an excuse to justify their action.

C. Chinese Medical Associations in Taichung City, Taichung County, Nantou County, and Changhua County stipulated the "2007 Plan Controlling the Amount of Medicals in the Central Region" together to control the number of practice Chinese medicals by building a market entry barrier. They use the authority of associations or other means to restrict business activities. Their act was sufficient to affect the supply and demand of Chinese Medical Service of the National Health Insurance

in the Central Region and constituted a concerted action in Article 7 of the FTL; therefore; it violated Article 14(1) of the same law. Each Association was imposed an administrative fine of NT \$50,000 pursuant to Article 41 of the said law.

Summarized by Chiou, Shwu-Fen; Supervised by Liao, Hsien-Chou □

Joint Operation of the Shipping Route of Donggang-Xiaoliuqiu Line

920th Commissioners' Meeting (2009)

Case: The FTC extended the approval for concerted action on "Donggang-Xiaoliuqiu Line" with attached conditions

Key Word(s): joint schedule, Donggang, Xiaoliuqiu

Reference: Fair Trade Commission Decision of June 25, 2009 (the 920th Commissioners' Meeting), Disposition Kung Lian Tzu No. 098003

Industry: Ocean Water Transportation (5010)

Relevant Law(s): The proviso of Article 14(1) and Article 15 of the Fair Trade Law

Summary:

1. Private transportation companies running the "Donggan-Xiaoliuqiu Line" applied to the Commission for concerted action on July 1, 2006. The Commission resolved in its 784th Commissioner's Meeting to approve the concerted action for three years (until July 1, 2009) and conditions attached pursuant to Article 15 of the Fair Trade Law (FTL). Since the approval is about to expire, the private transportation companies apply to the Commission for an extension of approval in March 2009.

2. Background

A. Xiaoliuqiu Island is located 8 nautical miles south west of Pingtung County; there are about 12,500 residences commuting for work, school, medical service, or shopping between Xiaoliuqiu to Donggang. Since there is neither an airport on Xiaoliuqiu nor road directly connected to Taiwan island, external transportation and supplies on Xiaoliuqiu Island totally relies on commuting ships. On December 31, 1965, the Port of Kaohsiung approved Jingqiang Cruise Co. to establish the "Business Division for Donggang-Xiaoliuqiu Line," which was comprised of five cruise companies: Zhongyi, Dongxing, Guanguang, Jingqiang, and Feima. They arranged the daily schedule together and take turns running the line.

B. On July 1, 2006, the Business Division for Donggang-Xiaoliuqiu Line applied to the Commission for an approval on the concerted action. According to the FTL: "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. The Business Division for Donggang-Xiaoliuqiu Line can apply Article 14(1)(i) of the said law: "unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency." The concerted action includes: common schedule, ticket sales and single ticket. The Commission resolved in its 784th Commissioner's Meeting to approve the concerted action for three years with time limit (until July 1, 2009) and conditions attached pursuant to Article 15 of the FTL.

3. Grounds for approval:

The concerted action makes external traffic more convenient to residence and tourists. After the concerted action of common schedule, ticket sales and single ticket, consumers may freely choose the schedule and shipping company using a single ticket. There will be commuting ships available during peak or off-peak hours, thus benefiting consumers; in addition, the passenger-load rate for commuting ships will boost, making business operations more efficient. Besides, since the government

subsidizes Liuxing Co., Ltd. on its East Liuxiu Line, consumers can also choose to ride the "Xintai" or "Jixiangruyi" ships instead; there are no obvious restrictions to competitions. In sum, it will benefit the overall economy and public welfare. Thus, the FTC extended the approval with burden attached pursuant to the laws. The FTC investigated the case and resolved by its 925th Commissioners' Meeting on June 25, 2009 to extend the approval from July 2, 2009 to July 1, 2012.

Appendix:

Zhongyi Shipping Co., Ltd.'s Uniform Invoice Number: 91877964

Pegasus Shipping Co., Ltd.'s Uniform Invoice Number: 91395039

Tongxin Shipping Co., Ltd.'s Uniform Invoice Number: 91882930

Jingqiang Shipping Co., Ltd.'s Uniform Invoice Number: 91810155

Guanguang Shipping Co., Ltd.'s Uniform Invoice Number: 90246378

Summarized by Luo, Ren-Yi; Supervised by Liou, Chi-Jung

Formosa Oilseed Processing Co., Ltd. & 7 other Enterprises

924th Commissioners' Meeting (2009)

Case: Formosa Oilseed Processing Co., Ltd. and 7 other enterprises applied to extend the concerted actions regarding shared shipping of soybean procurement

Key Word(s): soybean, shared shipping of procurement

Reference: Fair Trade Commission Decision of July 22, 2009 (the 924th Commissioners' Meeting), Letter Kung Lian Tzu No. 098004

Industry: Edible Oils and Fats Manufacturing (0840)

Relevant Law(s): Articles 14(1)(v) and 15(2) of the Fair Trade Law

Summary:

1. Formosa Oilseed Processing Co., Ltd. (hereinafter referred to as Formosa) and other enterprises filed a concerted action application to the FTC for shared shipping of soybean procurement in June 2000, which was approved in the resolution of the 458th Commissioners' Meeting on August 18, 2000. The extension application for such approval was successively granted on August 21, 2003 in the 615th Commissioners' Meeting and August 17, 2006 in the 771st Commissioners' Meeting with the last approval to expire on August 31, 2009. In order to reduce import procurement costs and have a smoother unloading process to stabilize the quality of the imported raw materials, Taisun Enterprise Co., Ltd., Fwu Sow Industry Co., Ltd., Central Union Oil Corp., Ton Shun Industry Co., Ltd., Ta Mei Trade Co., Ltd., Ta Ting Hang Ltd., and Chang Chi Foodstuff Factory Co., Ltd. entrusted Formosa as the representative of all eight companies to file an extension application to the FTC for the approval of shared shipping of soybean procurement.

2. Findings of the FTC after investigation: It is a free and open market for soybean importation where the qualifications and quantity of importation are both not restricted. Enterprises may freely select to apply for importation via shared shipping with other enterprises, via cargos by themselves, or in parcels directly from the grain suppliers. Currently there are two groups of shared shipping that have been approved by the FTC, one of which is the central Taiwan group represented by Formosa, and the other of which is the southern Taiwan group represented by TTET Union Corporation. There are also enterprises that choose to purchase and import soybeans by themselves or from the grain suppliers in parcels. Due to the increased international shipping rates, the aforementioned enterprises who used shared shipping started to select cargoes for transportation in order to reduce the costs. The percentage of using cargoes is gradually increasing. According to the statistics, with regard to the total import quantity of soybeans in 2006, 2007, and 2008, the percentage of the total quantity of soybeans imported via shared shipping by Formosa and 7 other enterprises in this case (excluding the quantity of importation via cargoes by individual enterprises) was not very high.

3. Grounds for approval:

(1) Pursuant to Article 14(1) of the Fair Trade Law (FTL), "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 : ...5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade...." Article 15 of the same law further provides that "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."

(2) By extending the approval of shared shipping of soybean procurement, Formosa and 7 other enterprises may reduce the import costs, storage loss, burden of capital backlog and interests, and procurement risks. The extension would therefore benefit the overall economy and public interest in compliance with Articles 14(1) (v) and 15(2) of the FTL and should be granted. The extension will be valid through August 31, 2012. However, to avoid the applicants from exploiting this approval in terms of the applicants' internal and external transactions and to convenience the FTC supervision, the FTC also required additional undertakings. The applicants were required to submit a quarterly execution report of this concerted action in writing to the FTC with regard to each importer's registered procurement quantity, actual procurement quantity, procurement loading date, loading port name, date when the ship arrives the loading port, date when the ship departs from the loading port, date when the ship arrives our domestic port, procurement price, each importer's quantity of monthly import, processing, sales, and stocks. In addition, the applicants may not exploit this approval and engage in other concerted actions, such as controlling the total procurement quantity and distributing quotas, or prevent any applicant from freely deciding its procurement quantity, or prohibit any applicant from self procuring and importing wheat, or refuse other enterprises to participate in this concerted

procurement without a justifiable ground. Moreover, a report shall be made to the FTC for any changes in the applicants of this concerted action. The applicants shall not exploit their market position obtained through this approval and make improper decisions on, maintain, or alter the prices, impede the fair competition of other enterprises, or engage in other behaviors exploiting their market position.

Appendix:

Formosa Oilseed Processing Co., Ltd.'s Uniform Invoice Number: 22102298

Taisun Enterprise Co., Ltd.'s Uniform Invoice Number: 59661701

Fwu Sow Industry Co., Ltd.'s Uniform Invoice Number: 56192402

Central Union Oil Corp.'s Uniform Invoice Number: 89480404

Ton Shun Industry Co., Ltd.'s Uniform Invoice Number: 56248004

Ta Mei Trade Co., Ltd.'s Uniform Invoice Number: 22148597

Ta Ting Hang Ltd.'s Uniform Invoice Number: 76483097

Chang Chi Foodstuff Factory Co., Ltd.'s Uniform Invoice Number: 52470087

Summarized by Chiang, Hui-Yi; Supervised by Yang, Chia-Hui □

Lien Hwa Industrial Corporation & 37 other Enterprises

930th Commissioners' Meeting (2009)

Case: Lien Hwa Industrial Corporation and 37 other enterprises applied to extend the concerted actions regarding shared shipping of wheat procurement

Key Word(s): wheat, shared shipping

Reference: Fair Trade Commission Decision of September 2, 2009 (the 930th Commissioners' Meeting), Letter Kung Lian Tzu No. 098005

Industry: Grain Mill Products Manufacturing (0862)

Relevant Law(s): Articles 7, 14 and 15 of the Fair Trade Law

Summary:

1. Currently there have been two approved concerted action applications in effective for shared shipping of wheat procurement. One of the two approvals was Disposition Kung Lian Tzu No. 095005 dated September 7, 2006 granting Lien Hwa Industrial Corporation (hereinafter referred to as Lien Hwa) and 37 other enterprises the approval of extension valid through September 30, 2009. This application was later joined by Guo-Cheng Flour Co., Ltd. and 2 other enterprises making a total of 41 applicant-enterprises. The other approved application was Disposition Kung Lian Tzu No. 096004 dated September 6, 2007 granting Lien Hwa and 6 other enterprises to independently establish a group for shared shipping of wheat procurement. This application was later joined by 18 other enterprises making a total of 25 applicant-enterprises. The concerted application in question was filed due to the fact that the approval granted in the former application was expiring.

2. Findings of the FTC after investigation: Since there is no domestic production of wheat, the industry in question relies entirely on imported wheat for raw materials. In the international trade, wheat is considered bulk grain. As a result, the procurement quantity and the ship size can affect the costs of the raw material procurement. In 2008, dry-bulk shipping rates increased drastically. As a result, most of the wheat

was transported via return cargos. However, this was only a temporary phenomenon. Regularly, dry-bulk shipping rates are lower than cargos. Especially with the convenient automatic maneuver, using shared dry-bulk ships to transport wheat is the main method of supply transportation. Shared shipping allows the enterprises to lower their costs and in turn benefit the consumers. The enterprises may also comply with the agricultural and economic policies of the government to maintain the stability of food supply and demand and benefit the overall economy and public interest. As a result, the FTC granted its approval for the extension in accordance with Article 15(2) of the Fair Trade Law (FTL) and Article 25 of the Enforcement Rules to the FTL.

3. Grounds for approval:

(1) Article 14(1) of the FTL provides that "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 : ...5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade..." Article 15 of the same law further provides that "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." The materials to be submitted for the extension application are provided in Article 25(1) of the Enforcement Rules to the FTL.

(2) By extending the approval of shared shipping of wheat procurement, the applicants may reduce the import costs, storage loss, burden of capital backlog and interests, and procurement risks. The extension would therefore benefit the overall economy and public interest in compliance with Articles 14(1)(v) and 15(2) of the FTL and should be granted. The extension will be valid through September 30,

2012. However, to avoid the applicants from exploiting this approval in terms of the applicants' internal and external transactions and to convenience the FTC supervision, the FTC also required additional undertakings. The applicants were required to submit a quarterly execution report of this concerted action in writing to the FTC with regard to each importer's registered procurement quantity, actual procurement quantity, procurement loading date, loading port name, date when the ship arrives the loading port, date when the ship departs from the loading port, date when the ship arrives our domestic port, procurement price, each importer's quantity of monthly import, processing, sales, and stocks. In addition, the applicants may not exploit this approval and engage in other concerted actions, such as controlling the total procurement quantity and distributing quotas, or prevent any applicant from freely deciding its procurement quantity, or prohibit any applicant from self procuring and importing wheat, or refuse other enterprises to participate in this concerted procurement without a justifiable ground. Moreover, a report shall be made to the FTC for any changes in the applicants of this concerted action. The applicants shall not exploit their market position obtained through this approval and make improper decisions on, maintain, or alter the prices, impede the fair competition of other enterprises, or engage in other behaviors in violation of the FTL.

Appendix:

Lien Hwa Industrial Corporation's Uniform Invoice Number: 11996904

Chiao Thai Hsing Enterprise Co. Ltd.'s Uniform Invoice Number: 24085909

Kou Feng Industrial Co., Ltd.'s Uniform Invoice Number: 33280208

Guo-Cheng Flour Co., Ltd.'s Uniform Invoice Number: 28513939

Hsin-Sheng Industry Co., Ltd.'s Uniform Invoice Number: 43350006

Tai-Yi Flour Mill Co., Ltd.'s Uniform Invoice Number: 43252602

First Flour MFG. Co., Ltd.'s Uniform Invoice Number: 43271636

Hsin Chu Flour Mill Co., Ltd.'s Uniform Invoice Number: 47040572

Hsin-Cheng-Hsin Flour Mill Co., Ltd.'s Uniform Invoice Number: 47111386

Ta Fong Flour Mill Co., Ltd.'s Uniform Invoice Number: 51073906

Tanyang Industrial Co., Ltd.'s Uniform Invoice Number: 55370408

Tung Yang Business Co., Ltd.'s Uniform Invoice Number: 51401008
Formosa Oilseed Processing Co., Ltd.'s Uniform Invoice Number: 22102298
Top Food Industry Corporation's Uniform Invoice Number: 80677145
Kuo Hsing Flour Mill Co., Ltd.'s Uniform Invoice Number: 57145006
Hong-Hsing Flour Mill Co., Ltd.'s Uniform Invoice Number: 22822640
Thai-Ho Flour Mill Co., Ltd.'s Uniform Invoice Number: 56210400
Ta Chia Flour Milling Co., Ltd.'s Uniform Invoice Number: 56009003
Chia Fha Enterprise Co., Ltd.'s Uniform Invoice Number: 56186014
Ching-Tai-Cheng Flour Mill Co., Ltd.'s Uniform Invoice Number: 56144401
Shun-Fa Flour Mill Co., Ltd.'s Uniform Invoice Number: 58497909
Tung-Rong Flour Mill Co., Ltd.'s Uniform Invoice Number: 59607524
Tung-Sheng Produce Industrial Co., Ltd.'s Uniform Invoice Number: 66290655
Fong-Mong Enterprise Co., Ltd.'s Uniform Invoice Number: 69261633
Uni-President Enterprises Corporation's Uniform Invoice Number: 73251209
Tai Cheng Flour Mill Co., Ltd.'s Uniform Invoice Number: 75424509
Kimlan Foods Co., Ltd.'s Uniform Invoice Number: 43008609
President Kikkoman Inc.'s Uniform Invoice Number: 23527408
Wei Chuan Foods Corp.'s Uniform Invoice Number: 11347802
Wan Ja Shan Brewery Co.'s Uniform Invoice Number: 35426782
Ve Wong Corporation's Uniform Invoice Number: 07067309
Gua Ching Chyuan Co., Ltd.'s Uniform Invoice Number: 23004247
Weitai Co., Ltd.'s Uniform Invoice Number: 35187282
Hsin Fu Cheng Food Corp.'s Uniform Invoice Number: 23868622
Wuan Chuang Food Industry Co., Ltd.'s Uniform Invoice Number: 64860217
Chuang-Yuan Soy Sauce Co., Ltd.'s Uniform Invoice Number: 22238160
Yi-Hsiang Foods Co., Ltd.'s Uniform Invoice Number: 86632928

Summarized by Lai, Shu-Ching; Supervised by Yang, Chia-Hui □

Taiwan Tobacco and Liquor Corporation & Two other Enterprises

939th Commissioners' Meeting (2009)

Case: The Fair Trade Commission initiated an ex officio investigation into the concerted increase of tobacco product prices by Taiwan Tobacco and Liquor Corporation, two other tobacco enterprises, President Chain Store Corporation, and two other major chain stores in violation of Article 14 of the Fair Trade Law

Key Word(s): tobacco products, health and welfare surcharge

Reference: Fair Trade Commission Decision of November 5, 2009 (the 939th Commissioners' Meeting), Letter Kung Er Tzu No. 0980010291, Letter Kung Er Tzu No. 0980010292

Industry: Tobacco Manufacturing (1000)

Relevant Law(s): Articles 14 and 18 of the Fair Trade Law

Summary:

1. This case originated from a newspaper report stating that Taiwan Tobacco and Liquor Corporation (hereinafter referred to as TTL), JT International S.A. (hereinafter referred to as JTI), and Philip Morris Taiwan S. A. (hereinafter referred to as Philip Morris) were to simultaneously increase the price of their tobacco products along with the DOH's decision to increase the health and welfare surcharge starting from June 1, 2009 where a pack of cigarettes is now subject to a health and welfare surcharge of NT\$20 instead of NT\$10. An ex officio investigation was therefore initiated by the FTC to see if said enterprises had violated the laws or regulations governing concerted actions.

2. Findings of the FTC after investigation:

(1) After investigating TTL, JTI, and Philip Morris, the FTC discovered that not only inter-brand competition but also intra-brand competition lies within all tobacco enterprises. Consumers take into account not only the price but also the brand loyalty, flavors, etc when selecting the tobacco products. Additionally, these three tobacco

enterprises decided to increase their product price at different times and for different reasons. The timings when these three enterprises informed their downstream retailers also varied. Though all three enterprises used NT\$5 as the pricing unit, each decided on different increments. Based on the previous experience and convenience, there was no adjustment via fractional prices. Each company provided different discount numbers and wholesale prices to their respective downstream retailers. Furthermore, the FTC conducted a market impact analysis from the perspective of economic model and price increase and could not exclude the possibility that the price adjustment by these three tobacco enterprises was independent and consistent with the economic rationality. Based on the existing evidence, the FTC could not determine that these three tobacco enterprises indeed violated the Fair Trade Law (FTL) by engaging in the prohibitions of concerted actions.

(2) Furthermore, the increase of the retail price should directly affect the consumers' benefits. The FTC therefore conducted an investigation on President Chain Store Corporation, Taiwan FamilyMart Co., Ltd., and HiLife Co., Ltd. to see if they had jointly increased the prices. It was found that these three chain stores received the notifications about the price increase from the upstream tobacco enterprises at different times. Based on the past trade experience and custom, when the upstream manufacturers raise the prices, normally the downstream retailers will also adjust the prices at the time when notified by the upstream manufacturers to reflect the cost increase in the retail price. This case was no exception. The act to increase the retail prices of the tobacco products by the three chain stores was based on their objective observation and judgment about the market. It was a rational strategy taken based on their rational considerations and their need for the competition.

3. Resolution of the Commissioners' Meeting:

Article 14(1) of the FTL provides that "no enterprise shall have any concerted action." Article 18 of the same law further provides that "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." After the investigation, it was difficult to say that these three tobacco enterprises and three chain stores violated Article 14 of the FTL. However, the act of increasing the retail prices of the tobacco products along with the increase of the health and welfare surcharge by the three chain stores might be considered an act of taking a free ride. In order to maintain the trading order of the tobacco product market and consumers' benefits, FTC issued a letter to these three chain stores to be attentive to the relevant regulations of the FTL to avoid future violation. Moreover, it was also found that all the three tobacco enterprises provided a suggestive retail price list to the downstream retailers as reference. This action might possibly lead to concerted resale prices. As a result, the FTC also issued a letter to request these three tobacco enterprises' attention not to violate the law.

Summarized by Huang, Hsiao-Yin; Supervised by Yang, Chia-Hui □

Uni-President Enterprises Corp. & 16 Other Enterprises

949th Commissioners' Meeting (2009)

Case: Uni-President Enterprises Corp. and 16 other enterprises applied to extend the concerted actions regarding shared shipping of corn procurement

Key Word(s): approval of concerted actions, corn, shared shipping

Reference: Fair Trade Commission Decision of January 13, 2009 (the 949th Commissioners' Meeting), Letter Kung Lian Tzu No. 099001

Industry: Prepared Animal Feeds Manufacturing (0870)

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

Summary:

1. Uni-President Enterprises Corp. (hereinafter referred to as "Uni-President")

and some other enterprises previously filed a concerted application to the FTC for shared shipping of corn procurement. The FTC resolved in its 794th Commissioners' Meeting to approve such concerted application on January 25, 2007. The approval was valid through January 25, 2010 (FTC Disposition Kung Lian Tzu No. 096001) with undertakings required. Since the approval was about to expire, in November 2009 Uni-President, as the representative of all applicants, applied to the FTC for an extension of the approved share shipping of corn procurement for another three years.

2. Findings of the FTC after investigation: It showed that through the shared shipping of corn procurement, the import costs, storage loss, burden of capital backlog and interests, and procurement risks can be decreased and reduced. In case of any trade dispute occurred, the ability to negotiate collectively can also be increased. Therefore, shared shipping could be beneficial to the overall economic interest. Additionally, corn is subject to free importation. The government has no restrictions on the qualifications of the importers. Enterprises may freely choose shared shipping to apply for importation of corn. Importers that do not participate in shared shipping can also import corn in parcels directly from the suppliers or by cargos. Since there remain numerous import channels without any centralized control by few enterprises, the shared shipping of corn procurement in this case should have only limited impact on the corn market. Furthermore, this concerted action should be so beneficial to the economy as a whole and in the public interest that the application for which shall be approved in accordance with Article 14(1)(v) of the Fair Trade Law (FTL).

3. The FTC imposes undertakings with regard to this approval pursuant to Article 15 of the FTL. The applicants shall submit a quarterly execution report of this concerted action in writing to the FTC with regard to each importer's registered procurement quantity, actual procurement quantity, procurement loading date, loading port name, date when the ship arrives the loading port, date when the ship departs from the loading port, date when the ship arrives our domestic port, procurement price, each importer's quantity of monthly import, sales, and stocks. In addition, the applicants may not engage in other concerted actions by exploiting this

approval or prevent any applicant from freely deciding its procurement quantity, or prohibit any applicant from procuring and importing corn on its own, or refuse other enterprises, without a justifiable ground, to participate in this concerted procurement. Moreover, a report shall be submitted to the FTC for any changes in the applicants of this concerted action. The applicants shall not exploit their market position obtained through this approval and make improper decisions on, maintain, or alter the prices, or impede the fair competition of other enterprises, or engage in other behaviors arising from the exploitation of their market position.

Appendix:

Uni-President Enterprises Corp.'s Uniform Invoice Number: 73251209

Summarized by Li, Shih-Che; Supervised by Liao, Hsien-Chou

4.2 Judicial Cases

Taipei County Photography Association

Taipei Supreme Administrative Court Decision (2009)

Case: The Supreme Administrative Court overruled Taipei County Photography Association's administrative litigation concerning the violation of the Fair Trade Law

Key Word(s): association, no price competition, joint declaration

Reference: Taipei Supreme Administrative Court Judgment (98) Pan-Tzu No. 291

Industry: Business Associations (9421)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The appellee (the FTC) investigated a compliant and found the following: on March 16, 2005, the appellant (Taipei County Photography Association) and Taipei County Photography Worker Union held a conference regarding photos specifically taken for national identification cards. They agreed to restrict members from price competition. Later, they issued a joint declaration and sent the written declaration to their members. The appellee concluded that the appellant violates Article 14(1) of the Fair Trade Law (FTL) for the following reasons: the appellant and Taipei County Photography Worker Union agreed to restrict members from price competition for the business regarding national identification photos. This impeded free competition in market and was sufficient to affect the demand and supply function of photo printing market in Taipei County. The appellee imposed disposition Kung Ch'u Tzu No. 094112 on the appellant and Taipei County Photography Worker Union pursuant to Article 41 of the FTL. The appellant disagreed with the disposition and filed this administrative action.

2. The appellant is a business association established pursuant to the Commercial

Group Act, its members are companies or firms engaging in photo shoots, photo printing, or sales of photo equipments. Members of the appellant and Taipei County Photography Worker Union are enterprises that compete horizontally; if the appellant and Taipei County Photography Worker Union use their dominant positions to restrict members business activities, market competitions would be restricted. Such action constitutes a concerted action in Article 7(4) of the FTL and shall be regulated by the FTL. Whether the agreement is enforced or not has nothing to do with the determination of law violations. The appellant and Taipei County Photography Worker Union held a conference regarding photos specifically taken for national identification cards and they both agreed to restrict members from price competition, thus impeding free market competitions. Later on, they issued a joint declaration, and the appellant sent the written declaration to members. Even though the joint declaration does not contain a fee standard, members may actually restrain from price competition under the impacts of the organization to which they belong. As a result, an enterprise may not use advantages in price, quantity, quality, service, or other conditions to seek business opportunities as the market mechanism will be affected and competitions will be restricted. The lower court has already analyzed in detail the following aspects in its decision: whether the agreement is enforced or the number of members complying with the restraint on price competition does not affect the determination of law violations, statements by the appellant are meritless, the original decision is correct in overruling appellant's petition. The appeal was groundless to petition this court to dismiss the original decision of the lower court for violating the FTL and relevant regulations.

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

Chapter 5

Unfair Competition-Resale Price Maintenance

Taiwan Sugar Corporation

903rd Commissioners' Meeting (2009)

Case: Taiwan Sugar Corporation was complained for violating the Fair Trade Law by selling Jiansu products

Key Word(s): Jiansu, recommended retail price, general distributor

Reference: Fair Trade Commission Decision of February 25, 2009 (the 903rd Commissioners' Meeting), Letter Kung Er Tzu No. 0980001798

Industry: Sugar Manufacturing (0893)

Relevant Law(s): Article 18 of the Fair Trade Law

Summary:

1. The complainant in this case is the general distributor for the Jiansu products of Taiwan Sugar Corporation (hereinafter referred to as TSC). The complainant claimed that TSC violated Article 18 of the Fair Trade Law for the price of TSC's Jiansu products.

2. Findings of the FTC after investigation

A. "Jiansu" (which means health and yeast) is a brand name used by TSC for yeast-related products. At the time, there are many yeast-related products in the market. Since the raw material for domestic yeast powder are almost 100% imported, if we use the percentage of yeast powder imported by TSC against the whole as a proxy, TSC's Jiansu products have a relatively low market share in domestic yeast powder market.

B. TSC signed a "Distribution Agreement for TSC's Jiansu Products" with the complainant. In the appendix, "TSC's price for Jiansu Products," it specifies that "the recommended retail price: Brewer Yeast NT\$ 500/bottle, Snow-flake Yeast NT\$180/

box, Jianxu Tablet NT\$ 200/can, Vita Yeast Power NT\$ 120/bag, Xiang Jiansu NT\$110/can, Jiansu Candy NT\$ 120/can, Yeast Powder NT\$3,500/bag." Besides, according to Article 12 of the Agreement, "the complainant shall maintain the end price in the distribution system, and no cutthroat competitions are allowed. For any violations to this Article, if the complainant fails to correct in the prescribed period after TSC's written notice, TSC may terminate the Agreement without advance notice and confiscate the performance bond." The complainant claimed the said article to directly restrict its sales price. However, TSC claimed that the said price is only a reference which indicates reasonable profits for distributors; TSC did not monitor the end price, nor did it request the complainant to comply with the said article. In fact, the complainant did not sell relevant products at the said price, and TSC have imposed neither corrective measure nor punishment against the complainant.

3. Grounds for Non-Disposition:

(1) According to Article 18 of the Fair Trade Law (FTL), "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." The above article regulates vertical price constraints between enterprises in the upper and lower streams; that is, an enterprise shall allow its trading counterpart to freely decide the resale price. If an enterprise sets the resale price for goods it supplied and request the trading counterpart to comply with relevant measures, trading activities in the lower-stream will be affected. Enterprises in the lower stream will be deprived the rights to freely determine price based on its cost and market competition, and price competition among sellers of same brand products will weaken. This is clearly prohibited by the FTL. In addition, in case an enterprise sets a recommended price for certain products, the Commission concludes that even with a recommended price, if the enterprise does not force distributors in the lower stream to agree to sell the product at the recommended price or with no discounts, a recommended price itself does not violate Article 18 of the FTL.

(2) The disputed article mentioned that "the end price in the distribution system

shall be maintained;" however, it did not restrict the resale price to a "specific," "highest," "lowest" amount or a price range. Thus, it is questionable whether the said article is enforceable in practice. In addition, the complainant admits that its price for distributors and consumers does not comply with TSC's "recommended retail price" in the agreement. TSC did not take any corrective measure or punishment against the complainant, and the complainant provided no evidence to have been punished by TSC when it failed to comply with the "recommend retail price" or failed to supervise the sales by lower stream distributors at the "recommended retail price." There is no evidence showing that TSC imposes punishments against trading counterparts to enforce the compliance.

(3) In addition, the end price for Jiansu products in TSC-owned stores are various and not the same as the "recommended retail price." Also, another TSC's distributor, R-T Mart International Ltd. has an end price for Jiansu products different from the "recommended retail price." The complainant also states that TSC's Jiansu products have various end price in the distribution system. Hence, we can confirm TSC's claim that the recommended retail price in the price table attached to the distribution agreement is merely a reference.

(4) In summary, based on existing facts, it was not sufficient to say that TSC has violated Article 18 of the FTL. However, the wording in TSC's agreement, which states that "the end price in the distribution system shall be maintained with no cutthroat competitions allowed," may lead to certain misunderstanding. The Commission thus requested TSC to modify the wording in TSC's agreement to avoid similar misunderstanding in the future.

Appendix:

Taiwan Sugar Corporation's Uniform Invoice Number: 03794905

Summarized by Chang, Chan-Chi; Supervised by Yang, Chia-Hui

Chapter 6

Unfair Competition-Lessening Competition or Impeding Fair Competition

Chien, Pin-Shun

878th Commissioners' Meeting (2008)

Case: Mr. Chien, Pin-Shun violated the Fair Trade Law by making other enterprises, through other improper means, participating in a concerted action

Key Word(s): restrain competition or obstruct fair competition, school lunch

Reference: Fair Trade Commission Decision of September 3, 2008 (the 878th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097123

Industry: Other Food and Beverage Services (5690)

Relevant Law(s): Article 19(iv) of the Fair Trade Law

Summary:

1. This case was initiated based on a letter sent to the Commission by the complainant on June 24, 2008. The letter complained that 16 out of 18 members of the Changhua County Commercial Association of Meal Box & Food (hereinafter referred to as "Meal Box & Food Association") formed the "168 Association." The chairman of the association, Mr. Chien, Pin-Shun, circulated a letter to all members on June 4, 2008, and required that "all members of the 168 Association may not sign any subcontractor agreement for enterprises which have not yet joined the 168 Association. If any member violated this rule, and helped a non-member enterprise sign the agreement, as well as such a misdeed was verified, the 168 Association would impose a fine of NT\$ 50,000 on such a member." The chairman's act concerned violation of the relevant provisions of the Fair Trade Law (FTL).
2. The findings of the FTC after investigation: It showed that the 16 members of

the "168 Association" are food (lunch boxes) factories, companies, and business entities that provide meal boxes and services and engage in business transactions in Changhua County. After the establishment of the 168 Association, these factories, companies, and business entities elected Chien, Pin-Shun to serve as the chairman, the only position established in the association. Mr. Chien was authorized to make an overall plan for the operation of activities and collect membership fees. However, on June 4, 2008, Mr. Chien faxed the aforesaid letter to members of the "168 Association," and required in the letter that these members might not sign any subcontractor agreement for non-members of the association, and any member which violated the rule would be fined for NT\$ 50,000. "Subcontractor" is an important evolution consideration for the item "Emergency Response Ability" (approximately 10% of the total mark) listed in the grading table of acquisition and purchase of meal boxes outside school for the year of 2008 formulated by the 33 junior high schools and elementary schools located in Changhua County. As "subcontractors" were the grading consideration of the item "Emergency Response Measures" for the past years for enterprises took part in tenders for junior high/ elementary school lunch. Enterprises of meal box in the county also all listed subcontractors as the content of emergency response measures. The letter issued by Chien, Pin-Shun and his act shall be considered sufficient to obstruct the other two enterprises, which had not yet joined the association, from participating in fair competition. Mr. Chien's act was reprehensible in terms of commercial ethics, and caused detrimental impacts on effect competition. In the same way, it had already affected the association's members' autonomy to make decisions in choosing subcontractors. The act was sufficient for the Commission to believe that Mr. Chien's act had the effect of restraining competition or obstructing fair competition.

3. Grounds for disposition: Chien, Pin-Shun issued a letter requiring that the association's members not to sign any subcontractor agreement for enterprises which had not yet joined the association, and any member which violated the rule would be fined for NT\$ 50,000. The tricks in his act were highly reprehensible in terms of commercial ethics, and sufficient to affect the association's members' autonomy

to decision making. With respect to Mr. Chien's act of making other enterprises participate in a concerted action through the improper means, there had been a concern that the act would restrain or obstruct fair competition of the meal box market of junior high schools and elementary schools in Changhua County, and the act was found violating Article 19(iv) of the FTL. Accordingly, Chien, Pin-Shun was imposed with an administrative fine of NT\$ 250,000 pursuant to the fore part of Article 41 of the FTL.

Summarized by Kuo, An-Chi; Supervised by Hung, Hsiu-Hsing □

Jiaxiang Box Lunch Food Processing Plant

921st Commissioners' Meeting (2009)

Case: Jiaxiang Box Lunch Food Processing Plant violated the Fair Trade Law by restricting price competition through the threat of withholding member certificate, signing check, affidavit, or other unlawful means

Key Word(s): box lunch, member certificate, check, bid

Reference: Fair Trade Commission Decision of July 1, 2009 (the 921st Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098095

Industry: Box Lunch Manufacturing (0899)

Relevant Law(s): Article 19(iv) of the Fair Trade Law

Summary:

1. Jiaxiang Box Lunch Plant (hereinafter referred to as Jiaxiang) is the Chairman of Taichung County Box Lunch Guild (hereinafter referred to as TCBLG). It requests members to issue a NT\$ 400,000 check or sign an affidavit for abiding TCBLG resolution in auctions; otherwise, member certificate will be withheld.
2. Findings of the FTC after investigation: The FTC consulted with the Taichung

County Government, TCBLG and Jiaxiang; the following is the summary result:

(1) Most box lunches in elementary or junior schools in Taichung County are supplied by TCBLG members. During academic year 2008, the price for school meals in Taichung County was between NT\$ 40 to NT\$ 43; but some schools intended to lower the bid price for school meal in academic year 2009.

(2) Most schools in the Taichung County hold auctions for box lunches once every academic year. The auction will be conducted between mid May to late August; more than half of the schools request bidders in the auction to provide member certificate of the Box Lunch Guild in its county or city as a qualification. The member certificate is issued twice a year, each effective for 6 months (one for January 1 to June 30, and the other for July 1 to December 31). Members of TCBLG all apply for member certificates twice a year to qualify for the auctions.

(3) When it was time to issue member certificate for the first half of 2009, Jiaxiang requested members to comply with TCBLG's resolution: members should not participate in auctions for school meals if the bid price was lower than NT\$ 43 dollars in 3 bids; besides, members must sign a NT\$ 400,000 checks or affidavits (warranting that members would not participate in auctions where a bit price was lower than NT\$ 43 in 3 bids and members shall comply with TCBLG's resolutions) as a warranty, otherwise they would not receive the member certificate. However, TCBLG had never made such a decision. The FTC found that some TCBLG members were rejected the member certificate by Jiaxiang because they did not sign the NT\$ 400,000 check or affidavit; some signed the affidavit just to acquire the member certificate.

3. Grounds for disposition:

(1) Subject: TCBLG did not resolve on the following matter: members shall not participate in auctions where a bit price is lower than NT\$ 43 in 3 bids; besides, members shall sign a NT\$ 400,000 check or affidavit. Jiaxiang obvious exceeds the authority of TCBLG Chairman. Jiaxiang shall account for the action as an individual.

(2) Subjective intent to restrict competition: even though schools specify price for school meals in the auction notice, such price have to be higher than two or more

enterprises' "preservation price" (the lowest supply price an enterprise is willing to participate in the auction for school meals.) Otherwise, the bid will fail. Jiexiang made use of TCBLG's name and notified members that the guild has made the following resolution: members should not participate in auctions with a bid price lower than NT\$ 43 dollars in 3 bids; members had to sign a NT\$ 400,000 check or affidavit as a warranty. Thus, members would refuse to participate in school meal auctions with a bid price lower than NT\$ 43; such auction will fail due to insufficient bidders. By restraining members in auctions, Jiexiang intended to make the school meal auction fail. Schools were thus forced to increase bid price for meals accordingly. The action was a vertical concerted action that indirectly affected the price for school meals. The intention was to restrict price competition.

(3) Means and impacts on market competition:

(i) Restricted by distance (the distance from factory to school) and capacity, only a few enterprises outside Taichung County join the auction; those enterprises supply merely a low percentage of school meals in Taichung County. Most school meals in Taichung County were provided by the 20 TCBLG members.

(ii) To qualify for school meal auction, TCBLG members all applied to Jiexiang for member certificates in the first and second half of the year. School meals are usually auctioned between mid May to late August. If a members did not comply with Jiexiang's instruction or request (for example, it did not issue a check or sign the affidavit, or it participated in an auction with bid price lower than \$43 in May or June), Jiexiang would withhold the member certificate for the first and second halves of 2009 as a punishment, or the check would be cashed and the affidavit would be reviewed by other members. Members worried that the right to bid might be affected if they did not receive the member certificate, checks might be cashed, or they might be criticized by other members. Therefore, they were forced to comply Jiexiang's instruction.

(iii) As mentioned above, Jiexiang shall, as chairman of TCBLG, issue member certificate to members. However, it abuses the power of TCBLG chairman, requested members to follow instruction unitarily, determines criteria for issuance of member certificate, and requested members to issue a NT\$ 400,000 check or affidavit as

warranty for compliance. Members were forced to comply in fear of not receiving the member certificate, criticized by other members, or losing the check. Thus, Jiexiang uses the member certificate, NT\$ 400,000 check and affidavit as means to control TCBLG members in the auctions.

(iv) In the disputed case, even though schools determine the price and criteria for school meals (e.g. number of dishes, with or without fruit, the number of bid winners), TCBLG and its members could still indirectly influence the price formation of the school meals. In other words, if members were forced to comply with Jiexiang's instruction and did not participate in auctions with a bid price lower than NT\$ 43 dollars for three bids, then during academic year 2009, auctions for school meal might fail in schools that set a bid price below the said standard, simply because there are no enough bidders. Schools will be forced to increase the bid price to avoid a failed bid resulting the short of school meals. The final price for school meals might thus be affected.

(4) In order to eliminate price competition among TCBLG members, Jiexiang requests compliance as a condition for issuing member certificate. Members were also request to sign a NT\$ 400,000 dollar-check or affidavit as warranty. Members were thus threatened and might not bid independently on their own will. Members were restricted to reach a single reservation price (i.e. members will not participate in auctions where a bit price is lower than NT\$ 43). As a result, auctions might fail or schools might have to increase bid price, affecting the supply price for school meals. After considering relevant factors, Jiexiang was ordered to cease the above illegal activities and imposed an administrative fine of NT\$ 600,000.

Appendix:

Jiexiang Box Lunch Plant's Uniform Invoice Number: 18315262

Summarized by Yang, Chung-Lin; Supervised by Hung, Shui-Hsing

Chapter 7

False, Untrue and Misleading Advertisements

DAIKIN Inc.

871st Commissioners' Meeting (2009)

Case: DAIKIN Inc. violated the Fair Trade Law by publishing untrue advertisement of DAIKIN air conditioners

Key Word(s): air conditioner, advertisement, number one

Reference: Fair Trade Commission Decision of January 27, 2009 (the 871st Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 099011

Industry: Retail Sale of Electrical Household Appliance in Specialized Stores (4741)

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

Summary:

1. The public reported that the advertisement of DAIKIN air conditioners published in the newspapers by DAIKIN Inc. (hereinafter referred to as DAIKIN) in May 2009 claiming that "DAIKIN's and Matsushita's small air conditioners are both ranked the number one products in sales... in Japan..." was based on no objective statistical data and possibly untrue.

2. Findings of the FTC after investigation:

(1) DAIKIN published the advertisement in question in the newspapers on May 2009. In this advertisement wordings of "Small Air Conditioners Leading Groups DAIKIN Matsushita" were indicated under the "Sales Ranking of Japan Air Conditioner Market." It was also stated under the ranking chart that "Source: The Japan Refrigeration and Air Conditioning Industry Association, DAIKIN 2007 Estimated Financial Statements for Matsushita and DAIKIN." The explanation of the wordings was that "Inverter Air Conditioners - Number One in Japan," DAIKIN stated in the advertisement that "DAIKIN's and Matsushita's small air conditioners

are both ranked the number one products in sales... in Japan..." The advertisement in question brought the consumers an impression that the sales of DAIKIN's small air conditioners together with Matsushita's products were both ranked number in Japan in 2007.

(2) It was found that DAIKIN used the data obtained from Fuji-Keizai Group's "Japan Fuji Economy - Electric Power and Energy System Market in 2008" and NIKKEI's "NIKKEI – 2009 Market Share" as the support for its advertisement. However, according to the above data, in Japan, Matsushita's market share of small air conditioners based on the sales amount was 22.2% in 2007, while DAIKIN 20%. Matsushita's market share based on the sales quantity was 21.7%, while DAIKIN 19.6%. Either way, Matsushita was the number one brand in sales. Furthermore, if the market share of small air conditioners in Japan from 2004 to 2007 was considered, DAIKIN was the number one brand in sales only in 2004. Matsushita was ranked number one from 2005 to 2007.

3. Grounds for disposition:

According to the market survey results gathered by DAIKIN, DAIKIN's sales of small air conditioners in Japan was only the number one brand in sales in year 2004. DAIKIN failed to submit evidence to prove that DAIKIN was the number one brand in sales in 2007 or when the advertisement in question was published. As a result, the advertisement in question claiming that "DAIKIN's and Matsushita's small air conditioners are both ranked the number one products in sales... in Japan..." went beyond the acceptable level and was sufficient to cause wrong perception of the public with regard to making reasonable determinations and trade decisions. DAIKIN indeed violated Article 21(1) of the Fair Trade Law by making false, untrue, and misleading representations in its advertisement and was imposed with an administrative fine of NT\$300,000.

Appendix:

DAIKIN Inc.'s Uniform Invoice Number: 03251000

Summarized by Huang, Li-Ming; Supervised by Chi, Hsueh-Li

National Development Initiatives Institute Sailing Education Institute

893rd Commissioners' Meeting (2008)

Case: The National Development Initiatives Institute and Sailing Education Institute violated the Fair Trade Law by publishing an untrue advertisement

Key Word(s): English Competency Test, GET, General English Proficiency Test

Reference: Fair Trade Commission Disposition Kung Ch'u Tzu No. 097158 dated December 12, 2008, Ratification by the 893rd Commissioners' Meeting of December 17, 2008

Industry: Educational Support Services (8580)

Relevant Law(s): Article 21(3) applies mutatis mutandis to Article 21(1) of the Fair Trade Law

Summary:

1. The case was initiated from an article in the newspaper saying that a private institution published a half-page advertisement in the United Daily News on March 10, 2008. The advertisement made the following claims: "the GET conforms to the Common European Framework (CEF), and its compliance is recognized by the Ministry of Education"; "The credibility of the GET is equivalent to that of the General English Proficiency Test, and such equivalence is recognized by the Ministry of Education"; and "the academic and research institute, 'National Development Initiatives Institute,' was established under the examination and approval of the Department of Higher Education, Ministry of Education." The findings of FTC after investigation showed that the full name of the GET is the "Global English Test," which was hosted by the National Development Initiatives Institute (hereinafter to referred as "NDI"). In the same way, the NDI's website claimed that "it is an academic and research institute of higher education which was established under the examination and approval of the Department of Higher Education, Ministry of

Education"; the website also declared that "the GET is an indicator test recognized by the Ministry of Education, and it conforms to types of English tests for civil servants." However, the Ministry of Education announced a press release and issued a letter to the Commission indicating in the letter that, "We have never endorse any English test institute, and have never recognized any English test; each authority and school is to recognize grades of any English tests on their own accord. However, the content, 'The effects of the GET are equivalent to those of the General English Proficiency Test, and such equivalence is recognized by the Ministry of Education --' indicated in the advertisement is suspected of misleading the general public." Because the content of such an advertisement was untrue and misled people into believing that the establishment of the NDI had something to do with the government, the Commission concerned the institute's violation of Article 21 of the Fair Trade Law (FTL) and initiated an ex officio investigation.

2. Based on the findings of the investigation, the advertisement in the newspaper concerned in this case was financed, produced, and published by the Sailing Education Institute, while the website concerned in the case was set up by the NDI, and it was carried in the name of the "National Development Initiatives Institute." Therefore, the Sailing Education Institute and the NDI were the advertisers of the advertisements in this case. Secondly, on the basis of the indication made by the Ministry of Education, each testing institute might not publicly declare that the effects of its test could be equivalent to those of other enterprises, and each English competency test used and being taken for reference. As for Subparagraph 4, Paragraph 2 of Point 4 of the Points of Internationalized Sponsorship of Colleges and Universities, it was based on the certificates in English language which were listed in the comparison table published on the website of the Central Personnel Administration (the Administration had repealed the table). In order to make schools continue to implement policies of the Ministry of Education, the Ministry still adopts each certificate in English language, which was originally listed, for the convenience of each school's application, compliance, and reference. However, the Ministry does not recognize these certificates. Therefore, an English testing institute may not

declare without authorization that it has received the certification from the Ministry of Education, and may not use such a declaration for advertisement and marketing, so as to avoid misleading authorities and schools. The NDI argued that it advertised and declared the wording, "The effects of the GET are equivalent to those of the General English Proficiency Test, and such equivalence is recognized by the Ministry of Education," because the 'Consulting Committee of Adoption and Recognition of Appraisal Certificates of Civilian Professional Abilities' of the Department of Technology and Vocational Education, Ministry of Education included "the GET" and "the General English Proficiency Test" in the recommendation list. However, the findings of the investigation showed that the list was merely for allocating and evaluating funds for the overall development of colleges and universities with respect to sponsorship and subsidization in relation to technological and vocational education; increasing or redeploying departments, sections, and classes; and changing names or systems. Including these two tests into the recommendation list did not mean that "is recognized by the Ministry of Education," and the Ministry of Education did not recognize that the credibility of the GET and those of the General English Proficiency Test were the same. On the basis of what have been mentioned above, the phrases "the GET is an indicator test recognized by the Ministry of Education" declared by the NDI on its website, and "is recognized by the Ministry of Education" as well as "The effects of the GET are equivalent to those of the General English Proficiency Test, and such equivalence is recognized by the Ministry of Education," which were declared in the advertisement of the newspaper by the Sailing Education Institute, misled people into believing that the quality of the GET had been recognized by the competent educational authority, the Ministry of Education, and they were found to be false, untrue, and misleading representations. The two institutes violated Article 21(3) that applies *mutatis mutandis* to Article 21(1) of the FTL.

3. Secondly, the findings of FTC after investigation demonstrated that the NDI is indeed an academic and research institute that was established under the examination and approval of the Department of Higher Education, Ministry of Education, and the finding was supported by the Ministry of Education Letter, Tai (83) Kao No. 003702,

dated January 21, 1994. Therefore, the wording, "it is an academic and research institute of higher education which was established after the Department of Higher Education, Ministry of Education examined and approved such establishment"; and "the academic and research institute, 'National Development Initiatives Institute,' was established under the examination and approval of the Department of Higher Education, Ministry of Education," which were declared on the website and in the advertisement of the newspaper by the NDI and the Sailing Education Institute were grounded.

4. In the same way, on the basis of the "Principles Governing the Ministry of Education's Promotion of English Competency Tests" provided by the Ministry of Education Order Tai-She-(1)-Tzu No. 0940075287C dated June 28, 2005, each authority and school must refer to the Common European Framework of Reference for Language learning, teaching and assessment (hereinafter referred as "CEF") while promoting an English competency test. Furthermore, in terms of the Central Personnel Administration's indication in Letter Chu-Li-Tzu No. 0950061896 dated April 24, 2006, a test which is formulated by each testing institute on its own accord, and is corresponding to the comparison standard of the CEF that may be included into types of English tests for civil servants, and each competent authority is to, on its own accord, decide on whether it will adopt the test or not. The GET of the NDI was corresponding to the reference table of the CEF, and therefore, the wording, "the GET conforms to the Common European Framework" and "it conforms to types of English tests for civil servants" which were declared on the website and in the advertisement of the newspaper by the NDI and the Sailing Education Institute were also grounded.

5. In accordance with the fore part of Article 41 of the FTL, the NDI and the Sailing Education Institute were ordered to cease the above-mentioned unlawful act immediately, and were imposed with an administrative fine of NT\$ 100,000 and NT\$ 50,000 respectively.

Appendix:

Sailing Education Institute's Uniform Invoice Number: 70482634

Summarized by Lai, Shu-Ching; Supervised by Lu, Li-Na

Durban Group Oak Park Construction Co., Ltd.

893rd Commissioners' Meeting (2008)

Case: Durban Group and Oak Park Construction Co., Ltd. violated the Fair Trade Law by publishing untrue advertisements

Key Word(s): untrue advertisement, principal of the advertisement, land use zoning, area

Reference: Fair Trade Commission Decision of December 17, 2008 (the 893rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097164

Industry: Buildings Construction (4100)

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

Summary:

1. This case was originated from a complaint abbreviated as follows: Durban Group published an advertisement (hereinafter referred to as "Commercial Times ad in casu") for the property at "Durban Double Happiness" (hereinafter referred to as "construction case in casu") in the Commercial Times dated April 24, 2006,. The advertisement made the following claims: "landscaped and serene 'Durban Double Happiness': there are a large living room, a large study room, a large main bedroom, and so on in each house"; and "a product with 51 pings (an area measure equal to 3.3057 square meter or 36 square feet) has open interior living space which sizes 40 pings." However, findings of the FTC after investigation showed that the use of the construction case in casu as specified in the usage license of such a construction

case in casu, was "Medication and Health Services," and the size of the area for the main building was only approximately 34.33 pings. Even if the areas of the auxiliary facilities, the balcony and the rain awnings were added to the original net floor area, the calculated net floor area was merely 38.85 pings. Consequently, Durban Group involved in publishing an untrue advertisement. In the same way, Durban Group also published the advertisement on sales of the construction case in casu on the outside back cover advertisement of the Journal of Taipei Medical Association Vol. 48 Issue No. 7 (hereinafter referred to as "Medical Association Journal ad in casu") on July 2004, and on the front page advertisement of the United Daily News (hereinafter referred to as "United Daily News ad in casu") dated August 8, 2004, and the representations such as "residence houses of national treasure," "landscaped residence houses," "a simply respectable residential building," and "a single duplex building for a big family" used in the advertisements all involved in untruth too.

2. Findings of the FTC after investigation: Durban Group admitted that it was the investor and seller of the said construction case, and it commissioned Oak Park Construction Co. Ltd. to sell the case for it. Therefore, Durban Group might be considered as the advertiser of the advertisements in this case. The findings of the investigation also demonstrated that the content of the Medical Association Journal ad in casu and the United Daily News ad in casu were drawn up by Oak Park Construction Co. Ltd. Moreover, the content of the Commercial Times ad in casu was written by a journalist upon the provision of the information from Oak Park Construction Co. Ltd. In addition, the advertisement expenses were paid by the same company and thus the company had the ability to substantially determine and control the content and the use of the advertisements. The findings of the investigation also showed that the commission from a closed deal would be the service fee of Oak Park Construction Co. Ltd. Therefore, the more the number of residence houses were sold during the commission period, the higher the profits could be received by the company. Accordingly, the aforesaid facts were sufficient to deem Oak Park Construction Co. Ltd. as an advertiser of the advertisements in this case.

3. Grounds for disposition:

(1) The usage description of a building in an advertisement on sales of houses is a factor that affects consumers' buying decisions of the houses. General consumers can learn how they may use the houses in the future based on the usage description stated in the advertisement. It is difficult for consumers to judge whether the usage specified in the advertisement violates laws and regulations related to construction management. Therefore, they may incur risks of being fined, being ordered to demolish their houses, reconstructing the houses, ceasing to use the houses, or restoring their houses to the previous conditions. The findings of the FTC demonstrated that the construction case in casu was located in the "Cultural and Educational Area" delineated under the urban plan, and the usage license of the construction case in casu as specified in "Human Health Services." From the perspective of law, therefore, such an area might not be used for residence houses. Nevertheless, Durban Group and Oak Park Construction Co. Ltd. used the representations, "residence houses of national treasure," "landscaped residence houses," "a simply respectable residential building," "a single duplex building for a big family," "let all people who are accustomed to proud celebrities houses acknowledge allegiance to this property truly and willingly," "serene residential houses for living," "landscaped and serene residential houses," and "there are a large living room, a large study room, and a large main bedroom in each house". These parts create a large-scale style that is commonly used by a wealthy and influential clan." These representations would easily make consumers mistakenly perceive that such a construction case could be used for residential houses, and the consumers made buying decisions based on such a wrong perception. In other words, there was a considerably large disparity between the content represented by the advertisements in this case, and the perception of the general consuming public, and this disparity had been beyond the point that could be accepted by the general public. The disparity was sufficient to result in wrong perceptions or decisions of the general public. Both companies were found to violate Article 21(1) of the Fair Trade Law (FTL).

(2) Furthermore, if an enterprise uses non-statutory terms as representations or symbols of the area of the building, and fails to give clear instructions as to the scope of such an area, these acts would likely result in people's wrong perceptions of the size of the area. Therefore, these representations or symbols are false, untrue, and misleading. The fact that in the advertisement published in Commercial Times, Durban Group and Oak Park Construction Co. Ltd. claimed "a product with 51 pings has open interior living space which sizes 40 pings" would easily made consumers perceive that the construction case was a 51-ping product, and the size of the "interior space" of the main building was 40 pings. However, the findings of FTC after investigation showed that the size of the main building was only between 34.29 and 34.60 pings – even if the areas of the auxiliary facilities, the balcony and the rain awnings, were added to the original net floor area, the then calculated net floor area was at most merely between 38.68 and 38.99 pings, and had not reached 40 pings size of the interior space that was claimed in the advertisement. After the Commission's review of the acts of Durban Group and Oak Park Construction Co. Ltd., these two companies were found to violate Article 21(1) of the FTL for the false, untrue, and misleading representations of their product. Pursuant to the fore part of Article 41 of the same Law, the companies were not only ordered to cease the aforesaid unlawful act immediately, but Durban Group was also imposed with an administrative fine of NT\$ 2 million, and Oak Park Construction Co. Ltd. with an administrative fine of NT\$ 1 million.

Appendix:

Durban Group's Uniform Invoice Number: 22817581

Oak Park Construction Co. Ltd.'s Uniform Invoice Number: 84918933

Summarized by Chi, Hsueh-Li; Supervised by Shen, Li-Yu □

Las Vegas International Entertainment Co. Ltd.

906th Commissioners' Meeting (2009)

Case: Las Vegas Co. violated Article 21 of the Fair Trade Law by making false advertisements while hosting "2009 World Circus and Children's Folkgame Fair"

Key Word(s): false advertisement, guiding unit, circus show

Reference: Fair Trade Commission Decision of March 18, 2009 (the 906th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098046

Industry: Amusement Parks and Theme Parks (9321)

Relevant Law(s): Article 21(3) mutatis mutandis Article 21(1) of the Fair Trade Law

Summary:

1. According to media reports, advertisements for "2009 World Circus and Children's Folkgame Fair --- Yilan Circus Show" might contain false or misleading contents regarding animal performance. The FTC took the initiative to investigate on January 31, 2009. At that date, there were still regular performance in the East Hall and West Hall, but the animal show room was closed. The FTC initiated ex officio investigation for possible violations to the Fair Trade Law.

2. The host for disputed performance is Las Vegas International Entertainment Co., Ltd. (hereinafter referred to as Las Vegas Co.) According to advertisement for "2009 World Circus and Children's Folkgame Fair -- Yilan Circus Show," there shall be horse riding, dog tricks, snakes coming out of the cave, camel tricks, and kangaroo tricks, clown" etc. in the animal show room. When the FTC conducted on-site investigation on January 31, 2009, the performance was suspended, and a notice was posted on site, saying that "due to changes in the program, the animal show room will be closed from January 31 to February 6." After Las Vegas Co. acquired the license, the performance shall return on evening from February 20 to 22. However, when the FTC visited the site again on February 21, there was still no animal performance. This clearly deviates from what the advertisement has claimed. According to the

FTC's investigation, the Las Vegas Co. admitted that during the Chinese New Year, the only animal performance performed in the animal show room was a miniature horse tour and some dog tricks; promised performances such as "snakes coming out of the cave, camel tricks, or kangaroo tricks" were substituted by animal dolls and magic shows presenting dogs, pigeons, etc. There was a huge difference between the claimed performance and actual performance, not acceptable by the public. As a result, the advertisement made false, untrue and misleading presentation.

3. In addition, the disputed advertisement claimed "guiding unit: Tourism Bureau of the Ministry of Transportations and Communications and the Yilan County Government." FTC inquired the above-mentioned authorities whether they instructed the program; both said no. Moreover, the Yilan County Government pointed out that it made clear not to be listed during the meeting held on November 13, 2008; it also sent two letters requesting not to be listed on the advertisement of Las Vegas Co., before signing the contract on November 28 and December 4, 2008. Las Vegas Co. intentionally leveraged public reliance on government authorities, causing consumers to mistakenly believe that the program was instructed by government authority. This has constituted false, untrue and misleading presentation.

4. Furthermore, Las Vegas Co. claimed that, due to changes in the site, large facilities such as the ferries wheel and pirate boat could not be installed. As a result, Las Vegas Co. offered 3D movie theater, earthquake experience vehicle, soccer room, family ball room, dinosaur play room, arcade basketball competition, and other indoor activities instead. The pleasure and attraction of those indoor activities can hardly compare with large facilities mentioned in the advertisement, such as "ferries wheel, wave swinger, pirate boat, merry go round, spinning cup," etc. Las Vegas Co. failed to meet general consumers' reasonable expectations on entertainment facilities when they travel to Yilan City. As a result, it had constituted false, untrue and misleading presentation. Las Vegas Co. was ordered to suspend above illegal activities, and an administrative fine of NT\$ 500,000 was imposed.

Appendix:

Las Vegas International Entertainment Co. Ltd.'s Uniform Invoice Number: 27576512

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

PresiCarre Co., Ltd. & Carrefour Taiwan Co. Ltd.

906th Commissioners' Meeting (2009)

Case: PresiCarre Co., Ltd. and Carrefour Taiwan Co. Ltd. violated the Fair Trade Law by posting the untrue advertisement of "get discount coupons of NT\$7,200 when spending up to NT\$3,600 with consumer vouchers "

Key Word(s): advertisement; false, untrue and misleading; discount coupon; restriction; consumer voucher

Reference: Fair Trade Commission Decision of March 18, 2009 (the 906th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098047

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

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

Summary:

1. The case was reported: in response to the financial crisis, our government issued the "consumer voucher" at the beginning of year 2009 in order to stimulate economy. Enterprises proposed all kinds of promotions for consumer voucher to encourage more business. Accordingly, Carrefour released a promotion "get discount coupons of NT\$7,200 when spending more than NT\$3,600 consumer voucher at Carrefour." The promotion was widely broadcasted on TV, newspaper, radio, and in-store posters. On the advertisement, it specified "purchase anything you want (except for cigarettes)" and that the coupon was not applicable to "Carrefour voucher and cigarette products." However, once a consumer actually got a "discount coupon," he/she would see the "directions for using the discount coupon" on back of the discount coupon, which

listed several product categories that were not applicable to the discount coupon. The product categories include: beer, liquors (such as whiskey, brandy, XO, and kaoliang liquor), delivery or installation fees, extended warranty for home appliances, and so on.

2. Findings of the FTC after investigation:

After the on-site survey, our investigator found that the categories of products actually applicable for the discount coupon were different from that on the advertisement, and the subject indicated that the categories specified on back of the "discount coupon" should prevail.

3. Grounds for disposition

(1) Regarding the main advertisement

Carrefour Taiwan Co. Ltd. (hereinafter referred to as Carrefour Taiwan) is an affiliate company of PresiCarre Co., Ltd. (hereinafter referred to as PresiCarre); its advertisement is solely sponsored and produced by PresiCarre. Carrefour Taiwan has not reviewed or approved the advertisement. However, Carrefour Taiwan and PresiCarre are independent legal entities. The disputed advertisement was displayed in Carrefour stores national-wide; the promotion for discount coupon applies to all domestic Carrefour stores; Carrefour Taiwan received operating income from the said advertisement; and the receipt a consumer got after purchasing at Carrefour was issued respectively by Carrefour Taiwan and PresiCarre. Thus, both Carrefour Taiwan and PresiCarre were subjects in this case.

(2) The FTC compared contents in the promotion advertisement and the notice on back of the discount coupon, and it found the two indeed indicated different types of products. Carrefour tried to encourage consumers to spend their consumer vouchers by suggesting a broader range of applicable items; while later on, the company adopted a more restricted rule on applicable product categories. Since Carrefour's advertisement failed to clearly disclose the true restrictions on the "discount coupon," it violated Article 21 of the Fair Trade Law regarding false advertisements. PresiCarre and Carrefour Taiwan are fined NT\$ 2,500,000 and NT\$ 500,000, respectively.

Appendix:

PresiCarre Co., Ltd.'s Uniform Invoice Number: 22662550

Carrefour Taiwan Co. Ltd.'s Uniform Invoice Number: 70384248

Summarized by Lin, Yu-Ching; Supervised by Chi, Shueh-Li

Asia Pacific Telecom Co. Ltd.

913rd Commissioners' Meeting (2009)

Case: Asia Pacific Telecom Co. Ltd. violated the Fair Trade Law by conducting in an untrue fee comparison and promotions advertisement on "Happy 888" package"

Key Word(s): comparative advertisement, international call rates, promotion package, gift advertisement, No. 1 brand in sales

Reference: Fair Trade Commission Decision of May 6, 2009 (the 913rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098073

Industry: Telecommunications (6100)

Relevant Law(s): Articles 21 and 24 of the Fair Trade Law

Summary:

1. The complainant reported the "Happy 888" advertisement published in Apple Daily, 2008 (hereinafter referred to as the disputed advertisement). The disputed advertisement was published by Asia Pacific Telecom Co. Ltd (hereinafter referred to as APTC). In the "comparative table of international call rates" (hereinafter referred to as the disputed table) of the disputed advertisement, the "promotion package" column for "Sparq" marked "N/A" which was different from the facts. Sparq is a brand of New Century InfoComm Tech Co., Ltd. (hereinafter referred to as NCIC), a competitor of APTC. Further, in the disputed advertisement Sparq's call rate for China was wrongfully specified as NT\$34.2 for 3 minutes and NT\$114 for 10 minutes. In

addition, promotion plan in the disputed advertisement specified that "we cooperate with 'the No. 1 brand in sales in domestic drug stores' – For Beloved One;" but there were no objective data supporting "For Beloved One" to be the No. 1 brand in sales.

2. Findings of the FTC after investigation:

(1) We found that, NCIC has proposed the Sparq "007 Promotion for June" at the time APTC published the disputed advertisement. Sparq's promotion plan allowed mobile users to make calls to China at the rate of NT\$ 0.092/second during discount hours. However, the disputed table failed to specify Sparq's promotion on "007 international calls" in the column of "promotion package" ("N/A" was what shown in the column).

(2) The disputed table used billing amount to calculate fees for Sparq's "007 international calls," rather than the actual fee charged in the promotion plan. However, when mobile users make calls to China during the specified discount period under Sparq's promotion plan, the actual charge for 3 minutes and 10 minutes would be NT\$16.56 and NT\$55.2, not NT\$34.2 and NT\$114, as listed in the disputed table. APTC failed to disclose in full the formula for calculating fees.

(3) Regarding the marketing phrase "No. 1 in sales," APTC admitted that it was solely based on a promotion posted on E4 page of Apple Daily on July 4, 2005, where the prize in lottery is "the No. 1 brand in sales in domestic drug stores;" there were no further supporting data.

3. Grounds for disposition

(1) As shown by the above facts, NCIC already promoted Sparq "007 Promotion for June" at the time APTC published the disputed advertisement. However, the disputed table marked "N/A" in the column of "promotion package" for Sparq's "007 international calls." This could make consumers falsely believe NCIC has no promotions on international calls at the time the advertisement was published. In addition, the disputed table failed to specify the formula and basis for determining fees. People may thus overestimate rates for "Sparq 007 international calls" and cause an unfair comparison. APTC made false, untrue and misleading representation as to

the service and price of companies being compared; it violated Article 24 of the Fair Trade Law (FTL).

(2) The disputed advertisement was based upon a promotion published in the E4 page of Apple Daily on July 4, 2005, which asserted the offered prize is "the No. 1 brand in sales in domestic drugstores." There were no further data supporting sales figure at the time. In addition, the above report lacked objective sales data, survey methodology, and ranking criteria. It was not based upon objective evidence. Thus, the representations of brand/sales ranking in the disputed advertisement are false, untrue, and misleading. It violated Article 21(3) which applied *mutatis mutandis* to Paragraph 1 of the same Article of the FTL.

Appendix:

Asia Pacific Telecom Co., Ltd.'s Uniform Invoice Number: 70771579

Summarized by Wu, Hsin-Te; Supervised by Chen, Chun-Ting □

Taiwan Hitachi Co., Ltd.

923rd Commissioners' Meeting (2009)

Case: Taiwan Hitachi Co., Ltd. violated Article 21 of the Fair Trade Law by publishing untrue advertisement

Key Word(s): air conditioning products, the only, number 1 in sales

Reference: Fair Trade Commission Decision of July 15, 2009 (the 923rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098098

Industry: Domestic Air-conditioning Equipment Manufacturing (2851)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. An enterprise reported that Taiwan Hitachi Co., Ltd. made the following

statements in advertisements: "the only company receiving Japanese energy-saving award in Japan Heisei 19th year" and "the only company receiving the Japanese energy-saving award for 8 times." However, the complainant also received the Japanese energy-saving award in Japan Heisei 19th year. In addition, another enterprise and a person reported that Taiwan Hitachi Co., Ltd. alleged itself to "to be number 1 in market sales for 18 years" in advertisements without any specific illustration or supporting evidences for this statement. The advertisement might contain untrue contents.

2. Findings of the FTC after investigation: according to the Economic Division, Representative Office in Japan, Bureau of Foreign Trade of the Ministry of Economic Affairs, there were indeed air conditioning products other than the "Hitachi" brand that received the Japanese energy-saving award for at least 8 times and the Japanese energy-saving award in Japan Heisei 19th year. In addition, the claim to be "the number one in market sales for 18 consecutive years" failed to specify supporting evidences. Taiwan Hitachi Co., Ltd. alleged that it based the advertisement on "GFK" survey on air-conditioning products, the "1994-2000 ACR Survey" by United Advertising, the "top ten brand of air-conditioners by market shares, 2000-2008" survey by Nielsen, the survey on "ideal brand" and "actual purchased brand" by Breakthrough Magazine, and surveys by Reader's Digest, etc. However, only the "GFK" survey on air-conditioning products was sufficient to show that Taiwan Hitachi Co., Ltd. is the top one brand in air-conditioner sales from 2004 to 2007. The rest surveys did not directly specify the annual sales volume or amount of air-conditioning products or were not related to the sales volume or amounts of brands at all.

3. Grounds for Disposition:

The Commission found the following statements in Taiwan Hitachi Co., Ltd.'s advertisements to be contradicted to facts: "the only company receiving Japanese energy-saving award in Japan Heisei 19th year" and "the only company receiving the Japanese energy-saving award for 8 times." Such wording might create misbelieves or

wrong decisions in customers, and they involved false, untrue, and misrepresentation. In addition, when an enterprise uses specific wording to represent or identify a product or service in advertisement, such as "the only," "the first," "the top," or "the largest" or other objective descriptions, such statements should be supported by objective evidences. Taiwan Hitachi Co., Ltd. failed to propose evidence showing it to be the number 1 in sales for 18 years. Therefore, the allegation of "the number 1 in market sales for 18 years" in advertisements was groundless. It violated Article 21 of the Fair Trade Law, and an administrative fine of NT\$ 600,000 was imposed.

Appendix:

Taiwan Hitachi Co., Ltd.'s Uniform Invoice Number: 11915305

Summarized by Yu, Wei-Jhen; Supervised by Chi, Shueh-Li

Kuo Yang Construction Co., Ltd.

934th Commissioners' Meeting (2009)

Case: Kuo Yang Construction Co., Ltd. violated the Fair Trade Law by posting untrue advertisement for the construction project of Southern California (Tahiti Ocean View District)

Key Word(s): Kuo Yang Construction Co., Ltd., construction project of Southern California, mezzanine design, building use

Reference: Fair Trade Commission Decision of September 30, 2009 (the 934th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 137

Industry: Real Estate Investment Industry (6811)

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

Summary:

1. This case originated from a complaint saying that: At the time when selling

the construction project of Southern California (i.e. Tahiti Ocean View District), Kuo Yang Construction Co., Ltd. (hereinafter referred to as Kuo Yang) provided the decoration design, flyers and model home, which was of the mezzanine design and furnished with home bedding sets. Kuo Yang also advertised in the Apple Daily that the construction in question could be used as family vacation homes. However, the building use was actually for the general services industry, general offices, general retail industry, etc, and not for residential use. Kuo Yang therefore violated Article 21(1) of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: Upon investigation it was found that the decoration pictures of the "Interior Design 29 Yong Chuang Interior Design Work Plan" provided at the sales site of Southern California could sufficiently cause the general consumers into believing that the construction in question could be legally constructed with a mezzanine to increase the indoor use of space. However, the Public Works Bureau of Taipei County said that in the attachment to the usage license of Southern California, the marked summary of the building did not indicate any application for the mezzanine design. A person who constructs the mezzanine design without an application will violate Article 77(1) of the Building Act and be subject to a penalty, correctional measure, or filing supplementary application as set forth in Article 91(1)(ii) of the same act. Therefore, Kuo Yang violated Article 21(1) of the FTL by employing false, untrue, and misleading representations in its "Interior Design 29 Yong Chuang Interior Design Work Plan" to promote its construction project of Southern California.

3. Additionally, a bedroom design in the mezzanine area was shown in the interior design work plan and model home of the Southern California. The flyer also expressed a concept of "living in Southern California with metro right downstairs" and contained descriptions of public facilities as included in the construction project, such as "Family Art Hall," "Swimming Pool and Gym," "Elite Business Center" (fully-equipped conference center when working at home...). The advertisement contents as a whole tried to express the superior facilities and amenities in terms

of living at Southern California. Such contents were sufficient to lead the general consumers into believing that the building in question could be for the residential use. In accordance with Article 73(2) of the Building Act, a building shall be used pursuant to the approved usage classification; in case of alteration of usage class or other alteration to the originally approved usage, usage alteration license shall be applied. If a building is not used as approved, the Urban Planning Act is violated and the violator can be subjected to a penalty and be ordered to demolish, reconstruct, or cease using the building or restore the building to its original state pursuant to Article 79 of the same act. It was found that the usage license of the Southern California showed that the original base usage was registered to be for industrial use, mainly for "general services industry, general offices, and general retail industry." But the usage as indicated in the advertisement was on the contrary to what was being approved. It is difficult for the consumers to learn about the violation of relevant building laws from the contents of the advertisement. Purchasers could face the risk of being fined if they fail to use the building in accordance with the approved usage classification. There was a considerably large disparity between the content represented by the advertisement in this case and the perception of the general consuming public. Such disparity was beyond the point that could be accepted by the general public. As a result, Kuo Yang was found to be in violation of Article 21(1) of the FTL, imposed with an administrative fine of NT\$1,500,000, and ordered to cease the unlawful act.

Appendix:

Kuo Yang Construction Co., Ltd.'s Uniform Invoice Number: 11603817

Summarized by Wang, Horng-Shiuan; Supervised by Hsu, Hung-Jen

Chiwe Industrial Co., Ltd.

943rd Commissioners' Meeting (2009)

Case: Chiwe Industrial Co., Ltd. violated the Fair Trade Law by posting untrue advertisement about its product "Magical Environmental Protection and Efficient Laundry Balls"

Key Word(s): untrue advertisement, laundry ball

Reference: Fair Trade Commission Decision of December 2, 2009 (the 943rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098167

Industry: Electronic Shopping and Mail-Order Houses (4871)

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

Summary:

1. The FTC contracted an outside organization during June 2009 to conduct the "supervision of violating advertisement on national television, radio stations, and Internet." Chiwe Industrial Co., Ltd. (hereinafter referred to as Chiwe) was found to have engaged in untrue online advertisement regarding its "Magical Environmental Protection and Efficient Laundry Balls" by claiming that "without water to clean... cleaning electrical stone uses micron technology of water molecules to naturally kill germs, clean, and bleach" and that "it kills 99.9% of germs."
2. Findings of the FTC after investigation: Chiwe claimed that the aforementioned advertisement was to explain that the product in question had the effects to kill germs, clean, and bleach. Chiwe also submitted three testing reports issued by SGS Taiwan Ltd. (hereinafter referred to as SGS). However, according to the professional opinions by SGS and the Bureau of Standards, Metrology & Inspection of the Ministry of Economic Affairs, these testing reports were about migratable fluorescent substances, pH, and antibacterial effect of *Staphylococcus aureus* ATCC 6538. These reports were not about the effects of the product in question at all and therefore couldn't be used to prove whether the product in question can clean or bleach. In addition, these antibacterial testing reports were made for *Staphylococcus aureus* ATCC 6538, the

antimicrobial rate of which is 94.4%, and not for all bacteria. Consequently, the statement of "killing 99.9% of germs" as claimed in the advertisement is inconsistent with the report result. The FTC therefore ordered Chiwe to immediately cease the aforesaid unlawful act and imposed an administrative fine of NT\$80,000.

Appendix:

Chiwe Industrial Co.,Ltd.'s Uniform Invoice Number: 16411465

Summarized by Yu, Yi-Fong; Supervised by Chen, Chun-Ting

Yahoo! Taiwan Holdings Limited, Taiwan Branch (H.K.)

946th Commissioners' Meeting (2009)

Case: Yahoo! Taiwan Holdings Limited, Taiwan Branch (H.K.) violated Article 21 of the Fair Trade Law by claiming to be the "the largest used vehicles market in Taiwan" on its YAHOO! Kimo auction website

Key Word(s): online auction, largest in Taiwan, used vehicles market

Reference: Trade Commission Decision of December 22, 2009 (the 946th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098175

Industry: Web Portals (6311)

Relevant Law(s): Article 21(3) of the Fair Trade Law applying mutatis mutandis to 21(1)

Summary:

1. This case originated from a complaint stating that: In the home page of YAHOO! Kimo auction website and the webpage of "auction/auto and motorcycles," it was claimed that YAHOO! was the "largest used vehicles market in Taiwan." However the statement was not supported by the objective statistics or sources to explain what the comparison criteria were. It was also discovered that the numbers of vehicles on

other used car sales websites, such as Ruten, 168Car, iCar, Ocar, and used.carnews.com, were much higher than that of YAHOO! Kimo auction website. This finding showed that YAHOO! Kimo was involved in untrue advertisement.

2. The statement of being "the largest used vehicles market in Taiwan" by Yahoo! Taiwan Holdings Limited, Taiwan Branch (H.K.) (hereinafter referred to as YAHOO!) on the YAHOO! Kimo auction website gave out an impression to the general public that the vehicle auction site of YAHOO! Kimo was the largest used vehicles trading market in Taiwan. This impression would have respectable effect of solicitation on sellers who are looking to post an advertisement to sell cars. The objective description of being "the largest" should be supported by objective comparison data or surveys. YAHOO! claimed that the statement of being "the largest used vehicles market in Taiwan" shall refer to the fact that the YAHOO! Kimo auction website provided "the best results in concluding used vehicle sales." YAHOO! Also provided the "ARO InsightXplorer Study Reports" prepared by InsightXplorer Co., Ltd. (hereinafter referred to as InsightXplorer) for May and June with regard to the overall performance of YAHOO! Kimo auction website. Said reports indicated that the numbers of YAHOO! Kimo's reach rate, unique visitors, and total page views were all higher than those of other open auction websites which showed that YAHOO! Kimo did gather more online sales. YAHOO! claimed that when there existed objectively multiple reasonable explanations, no false or untrue representation or symbol should be present if one of the explanations was true.

3. Grounds for disposition: From the overall observation of the phrase "the largest ... in Taiwan" as used in the advertisement, the scope of objective explanation should be different from YAHOO!'s interpretation of being "the largest website in Taiwan." YAHOO! also admitted that it failed to compare the trade numbers of its auto auctions with that of other used car markets. Moreover, according to InsightXploer, the scope of these "ARO InsightXplorer Study Reports" encompassed only the "Internet/Auction" and not the used car websites. It was found that YAHOO! Kimo auction website provided for numerous product classifications. The numbers of the

reach rate, unique visitors, and total page views of the entire auction website might not necessarily equal to those of the car auction classification. YAHOO!'s statement of its website providing "the best results in concluding used vehicle sales" was merely a subjective cognition and not supported by any objective data, such as sales numbers of other used car markets or surveys. Thus the advertisement in question indeed constituted false, untrue, and misleading representations. The FTC ordered YAHOO! to immediately cease the unlawful act and imposed an administrative fine of NT\$100,000.

Appendix:

Yahoo! Taiwan Holdings Limited, Taiwan Branch (H.K.)'s Uniform Invoice Number: 27240313

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

Martinlee International Co., Ltd.

947th Commissioners' Meeting (2009)

Case: Martinlee International Co., Ltd. violated Article 21(1) of the Fair Trade Law by publishing untrue online advertisement of its products

Key Word(s): false and untrue, misleading, cookware

Reference: Fair Trade Commission Decision of December 30, 2009 (the 947th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098178

Industry: Other Fabricated Metal Products Manufacturing Not Elsewhere Classified (2599)

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

Summary:

1. This case originated from a complaint by the public stating that Martinlee

International Co., Ltd. (hereinafter referred to as Martinlee) engaged in untrue advertisement by claiming on its webpage that its "Clearwater Cookware Series is ... without (chemical) coating" and that the "Clearwater Cookware...Full Series is of physical non-stick properties without any chemical coating" when its cookware was not entirely without coating.

2. Findings of the FTC after investigation: It was found that Martinlee's "Clearwater Cookware Full Series" consisted of 13 series products, in which 8 series of Clearwater Nano Functional Pot Series, 7-Layer Nano Series, Diamond Nano Series, Super Light Wok Series, Super Precise Steel Pot Series, Saucepan Series, Forge Pot Series, and Italian Pressure Cooker Series were separately called the "Clearwater Cookware Series."

3. Grounds for disposition: It was also found that Martinlee advertised on its PC home online store with the representations that "Clearwater Cookware Series is ...without (chemical) coating" and "Clearwater Cookware...Full Series is of physical non-stick properties without any chemical coatings." Its online store did not contain any item or series descriptions about its "Clearwater Cookware Series" or "Clearwater Cookware Full Series" but only the brand mark of "Clearwater." Consumers would have an impression from the advertisement in question that "Clearwater Cookware Series" and "Clearwater Cookware ...Full Series" were used broadly to refer to all of the cookware that was sold by Martinlee and was without (chemical) coating. However, it was discovered that part of the cookware sold by Martinlee on its online store had coating, such as Facebook Series, Diamond Ceramic Nonstick Series, and Nonstick Deep Frying Wok Series. There were both coated and non-coated products. Whether cookware has coating or not is highly related to the consumers' health and thus an important factor that a consumer would consider when selecting which product to purchase. The representations made by Martinlee in the above-mentioned advertisement could easily cause the consumers to have wrong perceptions or make wrong decisions and thus violated Article 21(1) of the Fair Trade Law. The FTC ordered Martinlee to immediately cease the unlawful act and imposed

an administrative fine of NT\$80,000.

Appendix:

Martinlee International Co., Ltd.'s Uniform Invoice Number: 12693463

Summarized by Lee, Wan-Chun; Supervised by Chen, Chun-Ting

Chapter 8

Damages to Business Reputation

Taipei Fuyi Art & Science Cram School

926th Commissioners' Meeting (2009)

Case: Taipei Fuyi Art & Science Cram School violated the Fair Trade Law by disseminating untrue statements sufficient to damage other business' reputation

Key Word(s): cram school, defamation in business

Reference: Fair Trade Commission Decision of August 5, 2009 (the 926th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098110

Industry: Educational Support Services (8580)

Relevant Law(s): Article 22 of the Fair Trade Law

Summary:

1. The private Taipei Shangzhi Art & Science Cram School (hereinafter referred to as Shangzhi) reported the case on Taipei Fuyi Art & Science Cram School (hereinafter referred to as Fuyi). Fuyi disseminated the marketing material, "Declarations by Fuyi Mathematics," (hereinafter referred to as marketing material), which might contain untrue contents and violated Article 22 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

Fuyi claimed the dissemination of marketing material was to protect its own rights, because Shangzhi made flyers indicating Fuyi had used untrue test results. We found Fuyi had put a test result for class "2007 (A) Taipei" in Fuyi's previous marketing material. Such test result included students who only took a 6-week review course, but not course "2007(A) Taipei." Both Fuyi and Mr. Luo admitted the above was true.

3. Grounds for disposition:

Fuyi and Shangzhi both are registered art & science cram schools located in Zhongzheng district, Taipei City. Their programs target senior high school curriculum. The disseminated marketing material, "Declarations by Fuyi Mathematics," was a tool for competition. In addition, in "Declarations by Fuyi Mathematics," it claimed that "in late August, 2008, Shangzhi (Xuzhe Mathematics) sent untrue marketing material to Taipei Municipal Jianguo High School and other senior high schools." However, investigation showed Shangzhi's marketing material "Fu-X, please stop disseminating untrue test results" did reflect facts; since Fuyi had put test scores of those to take the review courses in the marketing material for "2007 (A) Taipei" class. The market material falsely made people believe the participant to be a long-term student in class "2007(A) Taipei;" it constituted a false and untrue representation. Thus, the FTC concluded that Fuyi made and disseminated false and untrue representation in its marketing material. The enrollment was greatly affected by contents of marketing material and accuracy of students' test results. Fuyi's above untrue representation was sufficient to make the general public or trading counterparts had negative impression on Shangzhi's marketing material and reputation. Fuyi violated Article 22 of the FTL, and an administrative penalty of NT\$ 100,000 was imposed.

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

Chapter 9

Multi-level Sales

Solano Biochemical Technology Co., Ltd.

894th Commissioners' Meeting (2008)

Case: Solano Biochemical Technology Co., Ltd., which operated a multi-level sales business, violated the Supervisory Regulations Governing Multi-level Sales by engaging in unlawful practice

Key Word(s): multi-level sales, written participation agreement, can hold the participant liable, ways of dealing with the returning of goods, specific reasons rendering a breach of the agreement and the ways of dealing with the breach

Reference: Fair Trade Commission Decision of December 24, 2008 (the 894th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097161

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Articles 12,14 and 18 of the Supervisory Regulations Governing Multi-level Sales

Summary:

1. The case originated from the facts as follows: on November 5, 2008, the Commission visited the business place of Solano Biochemical Technology Co. Ltd. (hereinafter referred to as "Solano Company") to handle a business inspection. It however found out that the content of a written participation agreement concluded between a participant and Solano Company failed to encompass terms regarding the participant's withdrawal from the multi-level sales company and his/her returning of the goods. The contract also did not encompass laws and orders relevant to multi-level sales, ways of dealing with the returning of goods that can hold the participant liable, and specific reasons rendering a breach of the agreement and the ways of dealing with the breach. These facts constituted the company's violation of the relevant provisions of the Supervisory Regulations Governing Multi-level Sales.

2. Findings of the FTC after investigation: It showed that Solano Company filed a report on December 20, 2007 concerning its intention to practice multi-level sales since January 1, 2008 to the Commission for reference and recordation. However, the company used excuses to cover its lateness and failure to print its business manual for participants. Though, the company claimed that its business was not good enough and had few new participants. This circumstance resulted that the content of a written participation agreement concluded between a participant and Solano Company had, all the time, failed to encompass terms on the participant's withdrawal from the multi-level sales company and his/her returning of the goods, laws and orders relevant to multi-level sales, ways of dealing with the returning of goods when the participant is liable, and specific reasons rendering a breach of the agreement and the ways of dealing with the breach.

3. Grounds for disposition: After the Commission's review of the company's act, it was found to have violated Articles 12(1), 14, and 18 of the Supervisory Regulations Governing Multi-level Sales. Accordingly, Solano Company was not only ordered to cease the abovementioned unlawful act immediately, but it was imposed with an administrative fine of NT\$ 100,000 pursuant to Article 42(3) and the forepart of Article 41 of the Fair Trade Law.

Appendix:

Solano Biochemical Technology Co., Ltd.'s Uniform Invoice Number: 22829377

Summarized by Hsu, Tzung-Yu; Supervised by Hsu, Hung-Jen

OMNI AAA Group (Taiwan) Co., Ltd.

897th Commissioners' Meeting (2009)

Case: Omni AAA Group (Taiwan) Co., Ltd. violated the Fair Trade Law by failing to file a written report on statutory items to the Commission prior to engaging in multi-level sales

Key Word(s): multi-level sales, report filing for record

Reference: Fair Trade Commission Decision of January 14, 2009 (the 897th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098005

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Article 5(1) of the Supervisory Regulations Governing Multi-level Sales pursuant to Article 23(4) of the Fair Trade Law

Summary:

1. The complainant reported that Omni AAA Group (Taiwan) Co., Ltd. (hereinafter referred to as OMNI AAA) has engaged in multi-level sales at 5F., No.31, Sec. 3, Jhongshan N. Rd., Jhongshan District, Taipei City. The Company may have violated Article 5(1) of the Supervisory Regulations Governing Multi-level Sales, regulated pursuant to Article 23-4 of the Fair Trade Law (FTL).
2. The Commission found that OMNI AAA had notified the Commission on October 20, 2008 that it would start multi-level sales from October 24, 2008. However, OMNI AAA began recruiting participants and selling products since September 2008. This could be supported by the following evidences: the documents made by OMNI AAA on September 15, 17, and 18, 2008, and the model contract of participation and orders the Commission found at OMNI AAA's operation location on October 20, 2008. The company made confession to the above facts. It thus violated Article 5(1) of the Supervisory Regulations Governing Multi-level Sales and an administrative fine of NT\$ 100,000 is imposed pursuant to Article 42(3) and Article 41 of the FTL.

Appendix:

OMNI AAA Group (Taiwan) Co., Ltd.'s Uniform Invoice Number: 28970512

Summarized by Huang, Cheng-Jr; Supervised by Hsu, Hung-Jen

Amkey Co., Ltd.

942nd Commissioners' Meeting (2009)

Case: Amkey Co., Ltd. violated the Fair Trade Law by failing to report its alteration to its sales system to the FTC in accordance with the law

Key Word(s): multi-level sales, participant, credit card service charge, diminished value

Reference: Fair Trade Commission Decision of November 26, 2009 (the 942nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098168

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Article 23-2(2) of the Fair Trade Law, Articles 7(1), 12(1), 13, and 14 of the Supervisory Regulations Governing Multi-Level Sales

Summary:

1. This case originated from the business operations inspection by the FTC personnel conducted to Amkey Co., Ltd. (hereinafter referred to as Amkey) at its main place of business. It was found that Amkey deducted "credit card service charges" when a participant terminated the contract, altered its sales system without reporting to the FTC within the statutory period, failed to state in the written participation contracts the relevant multi-level sales regulations, conditions of withdrawal by a participant from the organization or plan, and rights and obligations

arising from the withdrawal, and the handling methods of returned goods due to reasons attributable to the participant as requested by the law. Amkey's aforesaid acts violated Article 23-2(2) of the Fair Trade Law (FTL) and Articles 7(1), 12(1), 13, and 14 of the Supervisory Regulations Governing Multi-Level Sales prescribed pursuant to Article 23-4 of the FTL.

2. Findings of the FTC after investigation: The FTC requested Amkey in writing to provide statements in person regarding the truthfulness of the aforesaid affairs. Amkey's statements were summarized as follows:

(1) Amkey followed its "Return/Exchange Procedures Schedule" and refunded 80% of the original purchase price with regard to goods that had an invoice date of more than 31 days ago. Though this schedule was not provided to the participant, Amkey had already separately published it at the place of business.

(2) Where a participant purchased the goods via credit cards but requested for a refund in cash, Amkey would additionally deduct the "credit card service charges" from the refunds.

(3) Amkey's bonus system was partly altered including the organization development bonus and newly added purchasing bonus but was not reported to the FTC due to the mistake by Amkey's personnel.

(4) Amkey's original enterprise manual contained the relevant regulations governing multi-level sales, handling methods of returned goods due to reasons attributable to the participant, and Article 23-3 of the FTL. However, the manual was planned to be reprinted in February 2009, the provision of which to the participants was therefore ceased.

3. Grounds for disposition:

(1) Amkey violated Article 7(1) of the Supervisory Regulations Governing Multi-Level Sales by failing to report to the FTC prior to its alteration of the organization development bonus and addition of "purchase bonus." Additionally, the written participation contracts entered into by Amkey and its participants failed to include relevant regulations governing multi-level sales. The contracts also failed to state

the calculation of "diminished value" under the "conditions of withdrawal by a participant from the organization or plan," in violation of Article 12(1) of the Supervisory Regulations Governing Multi-Level Sales which provides that a written contract with a participant shall include the "laws and regulations relevant to multi-level sales" and the "conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal" set forth respectively in Article 11(1)(iii) and (vii) of the same law.

(2) Furthermore, Amkey provided in Point 18 of its Distributor Agreement that "A Distributor may terminate this Agreement in writing at any time in the period from the 15th day to the 30th day from signing this Agreement..." The restriction on the period "from the 15th day to the 30th day" was inconsistent with the statutory requirement which provides that a contract can be terminated in writing at any time 14 days after the signing of the contract, in other words, no restriction on the period. Thus Amkey's restriction violated Article 13 of the Supervisory Regulations Governing Multi-Level Sales. In addition, Amkey's written participation contracts did not specify the method for handling a request by a participant to return goods due to reasons attributable to the participant, which was admitted by Amkey. This was also an violation of Article 14 of the Supervisory Regulations Governing Multi-Level Sales. As a result, an administrative fine of NT\$300,000 was imposed.

Appendix:

Amkey Co., Ltd.'s Uniform Invoice Number: 27563066

Summarized by Ma, Hai-Chich; Supervised by Yeh, Tien-Fu

Chapter 10

Other Deceptive or Obviously Unfair Conducts

10.1 Decisions

Taiwan Electronic Packaging Co.,Ltd.

871st Commissioners' Meeting (2008)

Case: Taiwan Electronic Packaging Co. Ltd. violated the Fair Trade Law by issuing a warning letter

Key Word(s): phone camera module, warning letter, patent licensing

Reference: Fair Trade Commission Decision of January 16, 2008 (the 871st Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097096

Industry: Other Optoelectronic Materials and Components Manufacturing (2649)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. This case originated from the fact that on June 5, 2006, Taiwan Electronic Packaging Co., Ltd. (hereinafter referred to as "Taiwan Packaging Company") issued to Motorola, Inc. a warning letter which indicated that the camera module of the two types of mobile phones, Motorola L6 and L7, infringed R.O.C. Invention Patent Number 158761 of Taiwan Packaging Company. Taiwan Packaging Company directly concluded that its patent right was infringed – its act without disclosing the coverage of its patent right in the aforesaid letter; affected normal trade in the market. In addition, Taiwan Packaging Company was not the patentee of the Invention Patent Number 158761. It merely obtained the patent licensing and inappropriately issued the warning letter without completed the registration of the licensing. Such an act violated the Fair Trade Law (FTL).

2. Findings of the FTC's after investigation: The FTC looked into the case and found out that the patentee of the Invention Patent Number 158761 concluded a patent license agreement with Taiwan Packaging Company on January 1, 2004 and June 30, 2006 respectively, and the duration of the licensing was from June 21, 2002 to June 30, 2006, and from July 1, 2006 to June 30, 2009 respectively, as well as on May 3, 2006, both parties concluded an exclusive licensing agreement. Secondly, the FTC found that in the Taiwan Patent Search system, the announced duration of licensing held by Taiwan Packaging Company was from July 1, 2006 to June 30, 2009, and was recorded in the registration section on implementation of patent right licensing, and this detail could be checked in Letter of Intellectual Property Office of Ministry of Economic Affairs Chih-Chuan-I-(95)-(1)-13017-Tzu No. 09520687860 dated August 25, 2006. Furthermore, the FTC phoned the Intellectual Property Office of Ministry of Economic Affairs, R.O.C. to confirm the fact that there was no other patent licensing registration on the record during the period of licensing period. However, the Commission found that Taiwan Packaging Company claimed in the email sent to Motorola, Inc. on June 5, 2006 that the products L6 and L7 at issue might infringed its company's patent right of Invention Patent Number 158761. Although the Taiwan Packaging Company was licensed exclusively by the patentee, but it had not completed the registration yet. In other words, before the company could legally exercise the patent right against any third party, it issued a letter that claimed the infringement of that the Invention Patent Number 158761.

3. Grounds for disposition:

(1) In the email that was sent to Motorola, Inc. on June 5, 2006 by Taiwan Packaging Company in this case. Taiwan Packaging Company claimed that the products, L6 and L7 at issue, might infringe its company's Invention Patent Number 158761. Although it was licensed exclusively by the original patentee at that time, Article 59 of the Patent Act provides that "[t]he assignment, trust or licensing made by the patentee of the patent right of an invention to another person to practice the invention, or the pledge created on the patent by the patentee shall not be asserted against any third party, unless it has been registered with the Patent Authority." Further on the basis

of the judgment of the Supreme Court of the Republic of China 96-Tai-Shang-Tzu No. 1658, "the so-called clause, 'the unregistered licensing of a patent right may not be asserted against any third party,' means that, when the third party infringes the patent right, the patent assignee may not claim his/her/its right against the infringer, provided that the patent licensing has not been registered; ..." Before Taiwan Packaging Company had completed registration of the patent licensing to exercise its right against any third party legally, it directly issued a letter against the third party that claimed that the infringement of its Invention Patent Number 158761,. The company's act was reprehensible in terms of commercial competition ethics; it was an obviously unfair act sufficient to affect trading order. Accordingly, the company violated Article 24 of the FTL.

(2) The extent of harm to trading order, which was caused by Taiwan Packaging Company's sending the warning letter, was determined to be small, after the FTC gave weight and consideration of the facts that Taiwan Packaging Company was the exclusive licensee of the patent at issue, and it corrected its act and completed the registration of such patent licensing within one month after the issuance of the letters, and the Commission based on the complainant's statement, which was that the recipient of the letter, Motorola, Inc. was not affected by the letter, and continued dealing the with the complainant. Therefore, in accordance with the fore part of Article 41 of the FTL, Taiwan Packaging Company was ordered to cease the unlawful act immediately.

Appendix:

Taiwan Electronic Packaging Co., Ltd.'s Uniform Invoice Number: 89404666

Summarized by Peng, Wei-Cheng; Supervised by Wu, Lieh-Ling

Textbook Publishing Enterprises

876th Commissioners' Meeting (2008)

Case: Textbook publishing enterprises violated the Fair Trade Law by providing improper gifts in marketing

Key Word(s): textbooks, sale promotion

Reference: Fair Trade Commission Decision of August 20, 2008 (the 876th Commissioners' Meeting), Dispositions Kung Ch'u Tzu No. 097113, No. 097114, and No. 097115

Industry: Books Publishing (5813)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. This case originated from the following facts: After the market of junior high school elementary school textbooks was liberalized, it was often-heard that some publishing enterprises adopted the marketing strategy of giving away free teaching tools and gifts in order to seize sales opportunities and continue to maintain the market share. This Commission accordingly initiated an ex officio investigation on it in order to understand whether related enterprises violated the Fair Trade Law (FTL) during the time when each junior high school and elementary school selected textbooks. Meanwhile, the Taoyuan County Station and Taipei County Station of the Investigation Bureau, Ministry of Justice provided the Commission with the information concerning Kang Hsuan Educational Publishing Corp. involving in giving away gifts to schoolteachers. Therefore, the Commission consolidated this Kang Hsuan case with the ex officio investigation.

2. Findings of the FTC after investigation:

(1) During the textbook selection period in 2007, Kang Hsuan Educational Publishing Corp. gave every schoolteacher a free Mother's Day bags (a Mother's Day bag contained a paper-made card, 50% discount coupons for Ma-Kao Ecology Park, grape seed facemasks and a pack of tissue).

(2) During the textbook selection period, Nani Books Corp. provided "Class Management Kits." The company claimed that this Class Management Kit was in the form of a box that allowed a salesman to carry easily during the period of textbook selection. At the time of exhibition, each item contained in the box would be placed and displayed. The Kits were to be provided to teachers, as the items contained in it were to be source materials for decorating the classroom of the First Grade, and also to collocate with teaching materials of the subject, Technology and Living Consumables, which was taught in the first term of the First Grade.

(3) Han Lin Publishing Co. Ltd. provided Super Signets Treasure Boxes, correction signets for mathematics, and CD Holders during the textbook selection period.

3. Grounds for disposition:

(1) Textbooks are significant in terms of education policies, and their nature are different from general products. In order to assure fairness in the textbook selection, an evaluation meeting on textbooks is established in each school for the purpose of determining which version of textbooks will be used for each subject. In other words, persons having the powers to select textbooks are schoolteachers who formed such an evaluation meeting. However, the purchasers of the textbooks are students who use the selected textbooks or their parents, rather than the teachers. As for those who select textbooks are different from the aforesaid persons who are actual purchasers, if publishers offer or claim to, during the textbook selection period, provide improper gifts to people who have the right to select textbooks. The publishers' acts may affect the decision-making processes of the teachers, irrespective whether they did indeed provide these free gifts after being chosen. Therefore, in order to ensure fairness in the selection of textbooks, sales enterprises that promote the textbooks improperly by giving away money, commodities or other economic benefits to seize the opportunity to be selected, the enterprises' acts are deemed to be blameful to commercial competition ethics, and will likely violate Article 24 of the FTL. Moreover, the determination whether an item provided by an enterprise to a teacher with the power to select textbooks is proper or not will depend on whether the given item is directly linked to the teaching of the adopted textbook, rather than the value of the item.

(2) With regard to the fact that Kang Hsuan Educational Publishing Corp. gave all teachers free Mother's Day bags, Kang Hsuan Educational Publishing Corp. admitted that it provided gifts to teachers of all junior high schools on Mother's Day in 2007. The findings of FTC after investigation showed that 50% discount coupons for Ma-Kao Ecology Park, and grape seed facemasks that were contained in the Mother's Day bag should all be characterized for personal use. Also, it was especially difficult for the Commission to believe that these items were directly linked to teaching of the adopted textbook. Moreover, Mother's Day is in May each year, and it is in just the same period for of the junior high school textbooks and primary school textbooks selection season. The Kang Hsuan Educational Publishing Corp. was very likely to affect the decision-making process through providing the above-said items to teachers who have powers to select textbooks.

(3) With respect to the fact that Nani Books Corp. gave for free "Class Management Kits," the findings of FTC after investigation showed that the kit contained less than 20 types of source materials that were used to decorate a classroom, such as color printed paper castles, flowers, grass, trees, insects, and fireworks. In the same way, the company admitted that the articles contained in the "Class Management Kit" were prepared at the time of textbook selection. In addition, they were also regarded as source materials for decorating the classroom of Grade One, and hence, they were provided to teachers. Furthermore, although the company claimed that such source materials could collocate with the class taught in the first term of Grade One, and with the classroom decoration works that is scheduled in the first term class of Grade Three, the findings of the Commission after investigation demonstrated that the content of the preparation for teaching the aforesaid curricula was that slips of blank paper, color pens, glues, scissors, and drawing tools prepared for decoration works. Decorating the classroom did not really need each kind of color printed and designed source materials provided by the company, and therefore, it was still difficult for the Commission to believe that such articles were directly connected to the adoption and teaching of the specific textbook. The circumstance that the company provided such improper articles had fit in the phrase provided in the Commission's explanatory regulation on textbooks that "utilizes the method of giving for free improper goods to

seize the opportunity that teachers select free goods providers' textbooks."

(4) With respect to the fact that Nani Books Corp. gave free "Class Management Kits," Han Lin Publishing Co. Ltd. provided Super Signets Treasure Boxes, correction signets for mathematics, and CD sholders, the treasure box and the correction signets were merely for teachers' convenience when they corrected school assignments or set examination questions, and CD storage covers were merely for storing discs and thus it would be difficult for the FTC to believe that all of these articles were directly connected to the teaching of the adopted textbook. Therefore, during the textbook selection period, Nani Books Corp.'s act of providing the above-mentioned items to teachers, might affect teachers' judgments on selection of textbooks. Accordingly, it had fit in the phrase provided in the Commission's Explanatory Regulation on Textbooks that "utilizes the method of giving free improper goods to seize the opportunity that teachers select the providers' textbooks."

(5) In conclusion, the acts of Kang Hsuan Educational Publishing Corp., Nani Books Corp., and Han Lin Publishing Co. Ltd. to give school teachers free improper goods that had no direct connection to the teaching of the adopted textbooks, fell under the type of act that utilized the method of giving free improper goods to seize the opportunity that teachers would select the providers' textbooks, and which was reprehensible in terms of commercial competition ethics. These companies' acts violated Article 24 of the FTL. Kang Hsuan Educational Publishing Corp., Nani Books Corp., and Han Lin Publishing Co. Ltd. were imposed with an administrative fine of NT\$ 5 million, NT\$ 2.3 million, and NT\$ 2.5 million respectively.

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 Chang, Chan-Chi; Supervised by Yang, Chia-Hui □

Cheng An Construction Co., Ltd.

886th Commissioners' Meeting (2008)

Case: Cheng An Construction Co. Ltd. violated the Fair Trade Law by failing to disclose information related to public facilities of a presale house

Key Word(s): presale house, public facilities, trading information

Reference: Fair Trade Commission Decision of October 29, 2008 (the 886th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097145

Industry: Buildings Construction (4100)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. This case originated from a consumer's complaint transferred from the Yilan County to the Commission. The facts of the case are abbreviated as follows: Four consumers ordered presale houses from Cheng An Construction Co. Ltd. (hereinafter referred to as "Cheng An Company") in 2005 for the construction project of "Tama City – Yu-Ching Palace." They later found out that in the sales process, Cheng An Company appeared to hide trading information, such as public facilities of a presale house, and the share of the areas. The company involved in violation of Article 24 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

Cheng An Company admitted that the six lands in the construction case for the construction project of "Tama City–Yu-Ching Palace" was owned by the entire householders of the property. Also, householders utilize the public facilities within the lands such as the courtyards, parking space, carriageways, and passageways, though the sizes of the areas of the public facilities that were used by each householder were different. However, the findings of the FTC after investigation showed that the sales and purchase agreement of the real estate in this case failed to clearly disclose the items, shares, and calculating of allocations of the public facilities to each co-owner. The agreement did not specify relevant information, such as the

summary of each household's share of the areas of public facilities either. Although Cheng An Company claimed that at the time of selling the construction project, it had stated to purchasers the shares of the areas of the common parts of the presale houses, and the proportion of the shares of such areas by means of showing the purchasers the master plan of the entire area of the property, and plans of proposals. The FTC inspected the plans and found out that these plans failed to clearly and completely disclose the information such as the public facilities, and the method of calculating the proportion of the shares of said areas. As these plans were professional diagrams used in architecture, it was indeed difficult to expect the general public, who has no professional knowledge of architecture, to become familiar with the complete information of the common parts by merely basing marks of these plans or the oral explanations of the salesmen. These facts were sufficient for the Commission to believe that Cheng An Company hid vital trading information, and such an act was a deceptive and was sufficient to affect trading order.

3. Grounds for disposition:

As disclosure of information on public facilities of a presale house is an important trading requirement, and real estate is durable goods for consumers, each purchaser is to thoroughly consider the future increment and the utilization benefit of a presale house before purchasing any houses. If the purchasers were familiar with the fact beforehand, which was that their shares of the public facilities such as the courtyards and the parking space that were exclusively used by other households, their wills of making buying decisions would be affected. Accordingly, the fact that Cheng An Company sold the presale houses for the construction project of "Tama City – Yu-Ching Palace" and failed to disclose in the sales and purchase agreement the public facilities, the share of the areas, and the method of calculating the proportion, showed that the company obviously took advantage of the disadvantageous position over the trading counterparts with asymmetrical information. Consequently, its act was deceptive and sufficient to affect trading order, and hence violated Article 24 of the FTL. The Commission ordered the company to cease the unlawful act and imposed an administrative fine of NT\$ 200,000 on it in accordance with the fore part of Article

41 of the same law.

Appendix:

Cheng An Construction Co. Ltd.,'s Uniform Invoice Number: 27488124

Summarized by Tseng, Chiu-Chen; Supervised by Hung, Hsiu-Hsing

Beansum Agricultural Products Co., Ltd. and Five Enterprises

887th Commissioners' Meeting (2008)

Case: Beansum Agricultural Products Co., Ltd. and five other enterprises violated the Fair Trade Law by borrowing or lending documents of company registration to participate in the tenders

Key Word(s): red beans, tariff quota, sufficient to affect trading order

Reference: Fair Trade Commission Decision of November 5, 2008 (the 887th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 097151

Industry: Wholesale of Grain and Field Bean (4531)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The complainant in this case claimed that for the tender for tariff quota of red beans in Batch 961, the enterprises which won the bid were Beansum Agricultural Products Co., Ltd. (hereinafter referred to as "Beansum Company"), Shinn Cherng Co., Ltd. (hereinafter referred to as "Shinn Cherng Company"), Ju Chieh Ltd. (hereinafter referred to as "Ju Chieh Company"), Lim Kuang Enterprise Co., Ltd. (hereinafter referred to as "Lim Kuang Company"), and E-Green Co., Ltd. (hereinafter referred to as "E-Green Company"). Among these companies, the same family owns Beansum Company and Shinn Cherng Company. While the rest of the companies are owned by the relatives and friends of the owner of Shinn Cherng Company's,

Wu, Chih-Ming. As a result of this very fact, Shinn Cherng Company borrowed supporting documents of company registration of these companies owned by said relatives and friends, to take part in the tender and obtained the entire tariff quota for the year of 2007. The company's act violated the Fair Trade Law. Furthermore, during the process of the investigation, the information in related case files showed that in the process of the tender for tariff quota of red beans in Batch 971, a similar situation also occurred, and therefore, the Commission had these two cases consolidated.

2. Findings of the FTC after investigation:

(1) Although Wu, Chih-Ming and his spouse, Chuang, Juei-Yun were registered as the owners of these two companies respectively, the findings of the FTC after investigation showed that Wu, Chih-Ming is the actual owner responsible for business operation of both Beansum Company and Shinn Cherng Company. These two companies are the largest domestic enterprises, which import red beans and engage in wholesale business, and their sales targets are processors, food stores, and grain shops. The quantities of red beans imported for the past three years (from 2005 to 2007) were 2,289 tons, 3,341 tons and 4,355 tons respectively, and the percentage of each of these quantities to the total annual import quantity for each of the said three years were 36.25%, 51.71%, and 46.42% respectively.

(2) The FTC further found out that prior to the tender for tariff quota of red beans in Batch 961 on November 17, 2006, that the quantity of red bean output is quite low as a result of warm winter at the end of the 2006 and beginning of 2007, and the future supply in the market would be hard-pressed. Wu, Chih-Ming, the owner of Beansum Company and Shinn Cherng Company, obtained the consent from the owners of Ju Chieh Company, Lim Kuang Company, and E-Green Company through, and borrowed the names of these companies to take part in the tender. Then, the five companies mentioned above participated in the tender with the aims of acquiring the entire tariff quota of red beans in Batch 961 and evading the limit of 500 tons of red beans per company. Consequently, each of these companies won the bid, with 500 tons of red beans per company, and the total of red beans won in this tender were 2,500 tons – it is 100% of tariff quota for red beans in Batch 961 was 100%. With respect

to the deal with Ju Chieh Company, Beansum Company, Shinn Cherng Company promised to give away some profits in exchange, and promised to give discounts to Ju Chieh Company's future purchases of red beans, in order to acquire supporting documents of the registration. After winning the bid, Shinn Cherng Company paid Ju Chieh Company NT\$ 49,000 as a profit to transfer the tariff quota. In addition, Beansum Company and Shinn Cherng Company remitted the royalty to E-Green Company together, and transferred the 300 and 200 tons of red beans under the name of Beansum Company and Shinn Cherng Company respectively. The tariff quota of 500 tons red beans won by Ju Chieh Company was also transferred under the name of Shinn Cherng Company. With respect to the Lim Kuang Company, since at the time when the Commission was investigating this case, Lim Kuang Company worried that it would be embroiled in a legal battle, it did not transfer under the name of either Beansum Company or Shinn Cherng Company. Instead, it handled the follow-up matters regarding the import of red beans in its own name. Moreover, the findings of the FTC after investigation showed that with respect to the tenders for tariff quota of red beans in Batch 971 on November 16, 2007, Beansum Company and Shinn Cherng Company also obtained the consent from the owners of Ju Chieh Company, Glide Ltd., and Erhpang De Ltd. through Wu, Chih-Ming, and took part in the tender with the names of these companies. After Wu, Chih-Ming set the tender amount and the tender quantity; Beansum Company and Shinn Cherng Company paid deposits uniformly. After the deposits were paid, Beansum Company and Shinn Cherng Company participated in the tender in their own names and the names of Ju Chieh Company, Glide Ltd., and Erhpang De Ltd. After the bid opening, except for Ju Chieh Company, Beansum Company won the bid with 238 tons tariff quota, and Shinn Cherng Company, Glide Ltd., and Erhpang De Ltd. won the bid with 500 tons of tariff quota respectively. The total of tariff quota won in this tender were 1,738 tons—69.52% of the total tariff quota of red beans in year of 2008. Moreover, Beansum Company and Shinn Cherng Company remitted the royalty together, and transferred the entire tariff quotas from Beansum Company, Glide Ltd., and Erhpang De Ltd. respectively under the name of Shinn Cherng Company for centralized management.

3. Grounds for disposition:

(1) The purpose for Bank of Taiwan to organize tenders for tariff quotas of certain agricultural products, such as red beans, is to secure the opportunity to fair participation in tenders by the mechanism of self-determination of price and quantity of individual enterprise, and at the same time, to let the unit offering tenders acquire the most favorable economic condition. Besides, in order to ensure the competitiveness of such an imported product in the domestic market and avoid massing the amount of tariff quota among the minority of enterprises, there's a maximum limit for the submission of a bid by a single enterprise. Because Beansum Company and Shinn Cherng Company borrowed the names of several companies, Ju Chieh Company, Lim Kuang Company, Glide Ltd., and Erhpang De Ltd., to take part in the tender for tariff quota of red beans. 100% of the tariff quota of Batch 961 and 69.52% of Batch 971 were obtained by these two companies, and the total amount exceeded the maximum limit regulated by the tender notices. This not only directly impaired other bidders' opportunities to win the tenders, but also made inroads on fair competition that focuses upon the essence of effect competition that encompassed the quality, prices, and services. These acts were reprehensible in terms of commercial ethics, and for other competitors that complied with the essence of fair competition, the actions of Beansum Company and Shinn Cherng Company constituted "obviously unfair" acts sufficient to affect trading order. Therefore, the Beansum Company and Shinn Cherng Company had violated Article 24 of the Fair Trade Law (FTL).

(2) Although Ju Chieh Company, Lim Kuang Company, Glide Ltd., and Erhpang De Ltd. had no intention, through the competitive tender procedure, of obtaining the tariff quotas of red beans and importing red beans for domestic sales. They lent the supporting and company registration documents to Beansum Company and Shinn Cherng Company to participate in the tender, and accordingly helped these two companies avoid the maximum limit of 500 tons per tenderer. With the result that the two companies had in hand actually 100% of the tariff quota in Batch 961, and 69.52% in Batch 971, and the amount exceeded far more than the maximum limits regulated by the tender notices. It not only directly impaired other bidders' opportunities to win the tenders, but also made inroads on fair competition that

focuses upon the essence of effect competition that encompassed the quality, prices, and services. These acts were reprehensible in terms of commercial ethics, and for other competitors that complied with the essence of fair competition, the actions constituted "obviously unfair" acts sufficient to affect trading order and violated Article 24 of the FTL.

(3) Beansum Company and Shinn Cherng Company were ordered to cease the aforesaid unlawful acts, and were imposed with an administrative fine of NT\$ 1 million in accordance with the forepart of Article 41 of the same law respectively. As for Ju Chieh Company, it was imposed with an administrative fine of NT\$ 500,000. Moreover, Lim Kuang Company, Glide Ltd., and Erhpang De Ltd., an administrative fine of NT\$ 200,000 was imposed respectively. With regard to E-Green Company, as the liquidation of E-Green Company was completed on December 27, 2006, the company's legal personality had no longer exist. Accordingly, it would not be necessary to continue looking into the legal implications of the acts of E-Green Company.

Appendix:

Beansum Agricultural Products Co., Ltd. 's Uniform Invoice Number: 22468253

Shinn Cherng Co., Ltd.'s Uniform Invoice Number: 15821716

Ju Chieh Ltd.'s Uniform Invoice Number: 70628510

Lim Kuang Enterprise Co., Ltd.'s Uniform Invoice Number: 04917757

Glide Ltd.'s Uniform Invoice Number: 28448467

Erhpang De Ltd.'s Uniform Invoice Number: 28601567

Summarized by Hsu, Cho-Yuan; Supervised by Liao, Hsien-Chou

Formosa Television Co., Ltd., Sanlih E-television Co., Ltd. & CTV Cultural Enterprise Ltd.

894th Commissioners' Meeting (2008)

Case: The programs of Formosa Television Co., Ltd., Sanlih E-television Co., Ltd., and CTV Cultural Enterprise Ltd. violated the Fair Trade Law by conducting an obvious unfair act

Key Word(s): viewer rating, material trading information, obviously unfair act

Reference: Fair Trade Commission Decision of December 24, 2008 (the 894th Commissioners' Meeting), Dispositions Kung Ch'u Tzu No. 097165, No. 097166, and No. 097167

Industry: Television Broadcasting (6021)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. This case originated from the fact that the National Communications Commission issued a letter to the Commission, and the content of the letter is abbreviated as follows: the public reflected that there was a concern that Formosa Television Co., Ltd. (hereinafter referred to as "Formosa Company") and Sanlih E-television Co., Ltd. (hereinafter referred to as "Sanlih Company") involved in exaggerating program viewer ratings. At the time when Formosa Company broadcast the program "Home" on May 21, 2008 for the first time and inserted the message to celebrate that the viewer rating of the program ranked first domestically. And at the time when Sanlih Company broadcasted the program "Full of Love," on June 25, 2008 for the first time, it inserted the information, the viewer rating of the program "ranks first domestically." Furthermore, the Commission initiated an ex officio investigation on CTV Cultural Enterprise Ltd. (hereinafter referred to as "CTV Company") and handled matter that CTV Company announced the investigation findings of the viewer rating in the program "CTV News Global Report", but failed to simultaneously disclose the methods of investigation. Such an act of CTV Company was an obviously unfair act sufficient to affect trading order.

2. Findings of the FTC after investigation showed that at the time when Formosa Company broadcasted the program "Home" on May 21, 2008 for the first time, Formosa Company inserted the messages, "the viewer rating of the program, Home, ranked first," and "the rating was continuously No.1 domestically". At the time when Sanlih Company broadcasted the program "Full of Love" on June 25, 2008 for the first time, it inserted the message, "after the program was broadcasted, its viewer rating ranked first domestically". As in the program "CTV News Global Report", CTV Company inserted the investigation findings of the viewer rating that "the viewer rating of the program ranked first domestically". All of these three companies failed to simultaneously disclose important trading information, which encompassed the investigating company, time of investigation, range of the region being investigated, investigated targets, methods of investigation, methods of sampling, value of sampling error, quantity of samples, and quantity of effective samples. When the investigation findings of the viewer rating were announced on TV screens publicly, and the aforesaid information was unable to be disclosed completely. Therefore, the information should have been supplemented by speaking such information aside with the aim of balancing reports. In the same way, the aforesaid information should have also adequately disclosed on print media or on its website. On the basis of this point, such acts of the aforesaid three companies, obviously unfair and sufficient to affect trading order, violated Article 24 of the Fair Trade Law. Accordingly, these three companies were imposed with an administrative fine of NT\$ 100,000 respectively, and were ordered to cease the unlawful acts pursuant to the fore part of Article 41 of the same law.

Appendix:

Formosa Television Co., Ltd.'s Uniform Invoice Number: 96975768

Sanlih E-television Co., Ltd.'s Uniform Invoice Number: 23740512

CTV Cultural Enterprise Ltd.'s Uniform Invoice Number: 18556744

Summarized by Wang, Horng-Shiuan; Supervised by Yeh, Tien-Fu

Far Eastern International Bank

904th Commissioners' Meeting (2009)

Case: Far Eastern International Bank violated the Fair Trade Law by unlawfully collecting penalty fees for mortgage payoff

Key Word(s): prepayment, payment period, loan balance, principle of decreasing payments

Reference: Fair Trade Commission Decision of March 4, 2009 (the 904th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098042

Industry: Banks (6412)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The informant filed for a mortgage loan of NT\$ 8,800,000 to Far Eastern International Bank (hereinafter referred to as FEIB) in March 2002. The informant then applied for a NT\$ 4,500,000 “revolving fund” in August 2006. He paid interests regularly. In August 2008, FEIB informed him the agreement would not be renewed. The informant then proposed to transfer loans to another bank. However, FEIB charged him penalty of NT\$ 49,500. The informant claimed that he handed his personal seal to a FEIB representative to sign the contract and he knew nothing about the penalty and found it unreasonable. The informant thus reported the case to the FTC.

2. Findings of the FTC after investigation:

(1) The informant signed a mortgage agreement of NT\$8.8 million with FEIB in March 2002. At first, the informant applied for the NT\$8.8 million-loan at another bank to “purchase a house” in 1998; the loan was then transferred to FEIB in 2002. As the payment period for loan expired, the parties signed another agreement in December 2007. Furthermore, the informant signed a contract with FEIB for a NT\$ 5,500,000 “revolving fund” in August 2006. The above fund was not meant to build or purchase a house.

(2) The NT\$ 8.8 million mortgage agreement was signed by the informant and

FEIB in March 2002, before the FTC announced the Principle for Prepayment Penalties in September 2002, and the informant did not request FEIB to adjust the agreement. The disputed penalty in the mortgage agreement lapsed in March 2005 as the payment period expired. Therefore, the informant signed another agreement with FEIB (6412) in December 2007, which specified “I (the informant) agree not to repay in full or acquire the consent letter for mortgage cancellation (of the proof for loan repayment) within 24 months after the interest rate changes. In case of any violations without FEIB’s consent, I agree to pay 100% of penalty of the original credit line, after discussing with the FEIB.” The above article regarding prepayment penalty failed to consider the borrower’s payment period and loan balance, and also failed to comply with the principle of decreasing payment.

3. Grounds for disposition:

(1) The original agreement signed by the informant and FEIB lapsed in March 2005 as the payment period expired. Thus, the parties signed another agreement in December 2007. In that agreement, the parties agreed to a penalty for mortgage prepayment. Since the FTC issued the Principle for Prepayment Penalties in Mortgage in September 2002, the prepayment penalty under the agreement made in December 2007 shall be regulated by the Fair Trade Law (FTL).

(2) In addition, if financial institutes and borrowers agree to a penalty for mortgage prepayment that is in violation of the principle of decreasing payments, the borrower will be bound by the agreement and become legally disadvantageous. Penalty for mortgage prepayment violated the above regulation and the additional agreement signed by FEIB and the borrower on December 2007 also violated the principle of decreasing payment. FEIB expropriated its dominant status and engaged in obvious unfair conducts which may affect market trading order. It violated Article 24 of the FTL and a fine of NT\$ 300,000 is imposed.

Appendix:

Far Eastern International Bank’s Uniform Invoice Number: 86517096

Summarized by Lai, Mei-Hua; Supervised by Chen, Yuhn-Shan

Asia Pacific Telecom Co. Ltd.

913rd Commissioners' Meeting (2009)

Case: Asia Pacific Telecom Co. Ltd. violated the Fair Trade Law by conducting in an untrue fee comparison and promotions advertisement on "Happy 888" package"

Key Word(s): comparative advertisement, international call rates, promotion package, gift advertisement, No. 1 brand in sales

Reference: Fair Trade Commission Decision of May 6, 2009 (the 913rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098073

Industry: Telecommunications (6100)

Relevant Law(s): Articles 21 and 24 of the Fair Trade Law

Summary:

1. The complainant reported the "Happy 888" advertisement published in Apple Daily, 2008 (hereinafter referred to as the disputed advertisement). The disputed advertisement was published by Asia Pacific Telecom Co. Ltd (hereinafter referred to as APTC). In the "comparative table of international call rates" (hereinafter referred to as the disputed table) of the disputed advertisement, the "promotion package" column for "Sparq" marked "N/A" which was different from the facts. Sparq is a brand of New Century InfoComm Tech Co., Ltd. (hereinafter referred to as NCIC), a competitor of APTC. Further, in the disputed advertisement Sparq's call rate for China was wrongfully specified as NT\$34.2 for 3 minutes and NT\$114 for 10 minutes. In addition, promotion plan in the disputed advertisement specified that "we cooperate with 'the No. 1 brand in sales in domestic drug stores' – For Beloved One;" but there were no objective data supporting "For Beloved One" to be the No. 1 brand in sales.

2. Findings of the FTC after investigation:

(1) We found that, NCIC has proposed the Sparq "007 Promotion for June" at the time APTC published the disputed advertisement. Sparq's promotion plan allowed mobile users to make calls to China at the rate of NT\$ 0.092/second during discount

hours. However, the disputed table failed to specify Sparq's promotion on "007 international calls" in the column of "promotion package" ("N/A" was what shown in the column).

(2) The disputed table used billing amount to calculate fees for Sparq's "007 international calls," rather than the actual fee charged in the promotion plan. However, when mobile users make calls to China during the specified discount period under Sparq's promotion plan, the actual charge for 3 minutes and 10 minutes would be NT\$16.56 and NT\$55.2, not NT\$34.2 and NT\$114, as listed in the disputed table. APTC failed to disclose in full the formula for calculating fees.

(3) Regarding the marketing phrase "No. 1 in sales," APTC admitted that it was solely based on a promotion posted on E4 page of Apple Daily on July 4, 2005, where the prize in lottery is "the No. 1 brand in sales in domestic drug stores;" there were no further supporting data.

3. Grounds for disposition

(1) As shown by the above facts, NCIC already promoted Sparq "007 Promotion for June" at the time APTC published the disputed advertisement. However, the disputed table marked "N/A" in the column of "promotion package" for Sparq's "007 international calls." This could make consumers falsely believe NCIC has no promotions on international calls at the time the advertisement was published. In addition, the disputed table failed to specify the formula and basis for determining fees. People may thus overestimate rates for "Sparq 007 international calls" and cause an unfair comparison. APTC made false, untrue and misleading representation as to the service and price of companies being compared; it violated Article 24 of the Fair Trade Law (FTL).

(2) The disputed advertisement was based upon a promotion published in the E4 page of Apple Daily on July 4, 2005, which asserted the offered prize is "the No. 1 brand in sales in domestic drugstores." There were no further data supporting sales figure at the time. In addition, the above report lacked objective sales data, survey methodology, and ranking criteria. It was not based upon objective evidence. Thus, the representations of brand/sales ranking in the disputed advertisement are false,

untrue, and misleading. It violated Article 21(3) which applied mutatis mutandis to Paragraph 1 of the same Article of the FTL.

Appendix:

Asia Pacific Telecom Co., Ltd.'s Uniform Invoice Number: 70771579

Summarized by Wu, Hsin-Te; Supervised by Chen, Chun-Ting

Shin Tao Gas Pipeline Equipment Company

929th Commissioners' Meeting (2009)

Case: Shin Tao Gas Pipeline Equipment Company violated the Fair Trade Law by improperly selling gas safety equipment in the pretext of gas safety inspections

Key Word(s): gas safety equipment, safety inspection, natural gas

Reference: Fair Trade Commission Decision of August 26, 2009 (the 929th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098120

Industry: Manufacturing Not Elsewhere Classified (3399)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint alleging that Shin Tao Gas Pipeline Equipment Company (hereinafter referred to as the Respondent) dispatched employees to the complainant's home on December 9, 2008 to conduct a safety inspection. The employees claimed that there was a sever gas leak and promoted their products of gas control valves to the complainant. Under the pressure, the complainant purchased two sets of gas control valves for a price of NT\$5,800. Later when the complainant was paying the gas bill, he learned that the Respondent and Shin-Tao Natural Gas were two different entities and determined that the Respondent

falsely represented itself to be Shin-Tao Natural Gas (the provider of piped-in natural gas) in selling its products.

2. Findings of the FTC after investigation:

(1) It was found that the Respondent's business was to sell gas safety equipment with Taoyuan as its major business area. The business nature of the Respondent is different from a piped-in natural gas provider. However, the Respondent's business name was similar to Shin-Tao Natural Gas, a provider of piped-in natural gas in Taoyuan. The Respondent, when making a statement at the FTC, admitted that equipment companies would often name their businesses in a way similar to the local natural gas providers to increase their chance in selling their gas control valves. The statement showed that the Respondent had the intention to confuse the public.

(2) It was also found that the Respondent would first send out a service notification two to three days before visiting a target. By using the trust that the general public has in the gas providers, the public would not suspect otherwise when the Respondent sent employees to their homes in the name of safety inspections and would allow these employees to enter into their homes to inspect the gas pipelines. The Respondent would later inform the target of the danger of a gas leak and in turn sell and install their gas control valves for the target who would be under the pressure after learning the emergency.

3. Grounds for disposition:

(1) According to Article 24 of the Fair Trade Law (FTL), "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." Additionally, Point 4 of the "Fair Trade Commission Disposal Directions (Guidelines) on Selling Gas Safety Equipment" provides that "A gas safety equipment distributor shall not engage in any of the following deceptive or obviously unfair conducts: 1. mislead the consumers in the pretext of gas prevention promotions, gas safety inspections, public interest groups, or government subsidies..." ; 5. further provides that "...in the event that a gas safety equipment distributor violates Point 4 hereof and the conduct is sufficient

to affect the trading order, it is a violation of Article 24 of the FTL." The general public normally has higher trust in the piped-in natural gas providers. The gas safety equipment distributor would use this trust to sell its products in the pretext of gas safety inspections without telling the target the true purpose of selling gas safety equipment. The public, without suspecting otherwise, would let the gas safety equipment distributor come to their homes to inspect the pipelines. The distributor would later express the danger that lies in the existing equipment and sell its products to the public. The entire sales process would cause the public to mistakenly enter into a transaction with the distributor and affect the right of the public's freedom of choice. It can be said that such conduct is deceptive and sufficient to affect the trading order.

(2) Shin Tao Gas Pipeline Equipment Company misled the public into believing that it was the same entity as the piped-in natural gas provider and sold its gas safety equipment in the pretext of safety inspections. Its overall sales activity violated Article 24 of the FTL and an administrative fine of NT\$200,000 was imposed on the Respondent.

Appendix:

Shin Tao Gas Pipeline Equipment Company's Uniform Invoice Number: 48999903

Summarized by Chang, Ching-Yi; Supervised by Sun, Ya-Chuan

MassMutual Mercuries Life

930th Commissioners' Meeting (2009)

Case: MassMutual Mercuries Life violated the Fair Trade Law by improperly collecting housing loan prepayment penalty

Key Word(s): real estate, housing loan, prepayment, penalty, principle of decreasing

Reference: Fair Trade Commission Decision of September 2, 2009 (the 930th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098122

Industry: Personal Insurance (6510)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. This case originated from the housing loan contract entered into by MassMutual Mercuries Life and Mr. Lin (hereinafter referred to as the Complainant). Both parties agreed on a fixed interest rate at 2.95% in their housing loan contract. The Complainant, after paying the interest for several years, found the loan interest too high and filed a complaint with MassMutual Mercuries Life. At the mean time the Complainant decided to prepay the housing loan and refinance with another bank. MassMutual Mercuries Life then collected prepayment penalty from the Complainant who alleged that the way MassMutual Mercuries Life collected the penalty was in violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation: It was discovered that the Complainant signed a "Supplemental Agreement to Loan Agreement" on April 12, 2006 with MassMutual Mercuries Life for two housing loans of NT\$2,400,000 each. Article 2 of such Supplemental Agreement provided that "the fixed interest rate for the period from April 12, 2006 to April 12, 2011 should be 2.95% ... 'fixed interest term.' Whereas the borrower intends to obtain the abovementioned prime interest rate and to compensate the lender for any loss arising from the borrower's prepayment after providing such prime interest rate, the borrower hereby agrees to pay the lender a

prepayment penalty equal to 1% of NT\$1,085,000 whenever the prepayment amount reduces the principal down to NT\$1,085,000 or lower." It was also found that from May 2005 to March 2007 MassMutual Mercuries Life used the "Supplemental Agreement to Loan Agreement" in question in 138 cases, in which prepayment penalties were collected in 21 cases pursuant to the above-referenced article.

3. Grounds for disposition: In order to make sure that the banking enterprises do not to exploit their advantageous status and improperly collect prepayment penalties from housing loan borrowers and to maintain the trading order and improve fair competition, the FTC has promulgated the "Fair Trade Commission Guidelines on the Charge of Penalty fees for Prepayment of Housing Loans by the Financial Enterprises" (hereinafter referred to as the Guidelines on the Charge of Penalty fees for Prepayment of Housing Loans), and Item 6 of which provides that "the charge for the prepayment penalty shall decrease progressively by taking into consideration the time a borrower makes the repayment and his loan balance." It was found that the actual penalty calculation used by MassMutual Mercuries Life was merely to deduct the repayment limit from the loan balance. In other words, if the principal is paid down to NT\$1,085,000 or lower within the "fixed interest term," the single prepayment penalty is always NT\$10,850. Thus, no matter when a borrower repays to the limit mentioned above within the "fixed interest term," the amount of the prepayment penalty is always the same. The actual penalty calculation failed to decrease progressively by taking into consideration the time a borrower makes the repayment and his loan balance. There were 21 cases in which the penalties were collected pursuant to this article in question. Based on these facts, it was sufficient to say that the penalty calculation was inconsistent with Item 6 of the Guidelines on the Charge of Penalty fees for Prepayment of Housing Loans. Therefore MassMutual Mercuries Life was found engaged in an obviously unfair conduct sufficient to affect the trading order and violated Article 24 of the FTL. The FTC imposed an administrative fine of NT\$200,000 in accordance with the forepart of Article 41 of the FTL.

Appendix:

MassMutual Mercuries Life's Uniform Invoice Number: 84443471

Summarized by Yung, Hsiang-Yu; Supervised by Chen, Yuhn-Shan

Yuan Chih Real Estate Brokerage Ltd.

933rd Commissioners' Meeting (2009)

Case: Yuan Chih Real Estate Brokerage Ltd. violated the Fair Trade Law by engaging in deceptive conducts sufficient to affect the trading order by neglecting to inform the homebuyers the rights to select between "Ministry of Interior Sample of the Offer Letter" and negotiation deposit

Key Word(s): brokage, offer letter, negotiation deposit

Reference: Fair Trade Commission Decision of September 23, 2009 (the 933rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098131

Industry: Real Estate Agencies (6812)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. This case originated with a complaint in which the complainant claimed that he entered into a real estate sales contract with the homeowner (seller) and paid the security deposits after he was shown the house through Yuan Chih Real Estate Brokerage Ltd. (hereinafter referred to as Yuan Chih). Later Yuan Chih requested the complainant's spouse to sign the complainant's name on behalf of the complainant on the offer letter and the buyer's commitment letter to pay commissions. However, Yuan Chih did not explain the substitutive relations between the letter of intent for real estate sale (negotiation deposit agreement) and offer letter, nor did Yuan Chih explain the meaning and legal effects thereof to the complainant or his spouse before they signed the documents. The complainant therefore submitted this complaint to

the FTC.

2. Findings of the FTC after investigation: Yuan Chih failed to follow the normal procedure which required the brokers to have the complainant sign an offer letter or letter of intent for real estate sale prior to the negotiation with the homeowner on the complainant's behalf. To the contrary, Yuan Chih, in order to finalize the procedure, provided the offer letter and buyer's commitment letter to pay commissions to the complainant's spouse after the complainant and the homeowner completed signing the sales contract. The complainant and the respondent did not deny these facts. Yuan Chih claimed that it did inform the complainant of the rights to select between "Ministry of Interior Sample of the Offer Letter" and negotiation deposit, their differences and substitutive relations before the sales contract was signed, which was denied by the complainant.

3. Grounds for disposition:

(1) Pursuant to Article 24 of the Fair Trade Law (FTL), "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." In light of the characteristic of information asymmetry in the housing brokerage, the FTC enacted the "Fair Trade Commission Disposal Directions (Policy Statements) on Real Estate Brokerage" to require a real estate broker to, before signing a contract with a buyer, fully disclose the differences between the negotiating deposit agreement and the "Ministry of Interior Sample of the Offer Letter" and their substitutive relations. Failing to do so might violate Article 24 of the FTL.

(2) Pursuant to the general brokerage procedure, Yuan Chih was supposed to fully disclose to the buyer the differences between the negotiating deposit agreement and the "Ministry of Interior Sample of the Offer Letter" and their substitutive relations and present the letter of intent for real estate sales or offer letter to the buyer for getting his signature prior to the negotiation. Due to the variety of the needs of the homebuyers, the brokerage procedure might be adjusted on a case-by-case basis. However, no matter which document, namely the sales contract, the letter of intent

for real estate sales, or the offer letter, was signed by the buyer first, Yuan Chih was still supposed to explain the differences and substitutive relations between the negotiation deposits and the offer letter before accepting the commission of the buyer and negotiation with the seller. In the present case, Yuan Chih only presented the offer letter and buyer's commitment letter to pay commissions to the complainant's spouse after the buyer and seller had signed the real estate sales contract to finalize the brokerage procedure and had the spouse sign the complainant's name on these two documents. Though the offer letter and buyer's commitment letter to pay commissions contained the complainant's name, they were provided only after the complainant had entered into the real estate sales contract. Therefore it is no proof at all that the complainant had learned the differences and substitutive relations between the negotiation deposits and the offer letter before he commissioned Yuan Chih to negotiate or entered into the real estate sales contract.

(3) With regard to the complainant's statements that Yuan Chih failed to inform the complainant of the differences between the negotiating deposit agreement and the "Ministry of Interior Sample of the Offer Letter" and their substitutive relations when the complainant commissioned Yuan Chih to provide the brokerage services, Yuan Chih could not provide any written documents to prove that it had performed its duties as mentioned above. Moreover, since the complainant lacked the experience in purchasing real estate, it was not unreasonable that he did not understand the differences between the negotiating deposit agreement and offer letter and their substitutive relations. As a result, Yuan Chih's failure to inform the complainant of the differences between the negotiating deposit agreement and the "Ministry of Interior Sample of the Offer Letter" and their substitutive relations was found a concealment of important trade information. Such a conduct was a deceptive one sufficient to affect the trading order. Yuan Chih's conduct violated Article 24 of the FTL and was subject to an administrative fine of NT\$200,000.

Appendix:

Yuan Chih Real Estate Brokerage Ltd.'s Uniform Invoice Number: 80446996

Summarized by Yang, Chung-Lin; Supervised by Hung, Shui-Hsing

Mr. Li and Huah Jenn Machine Co., Ltd.

941st Commissioners' Meeting (2009)

Case: Mr. Li and Huah Jenn Machine Co., Ltd. were complained for violating the Fair Trade Law by improperly mailing warning letters

Key Word(s): warning letter, authentication report, pre-procedural action

Reference: Fair Trade Commission Decision of November 18, 2009 (the 941st Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 098166

Industry: Textile, Apparel and Leather Production Machinery Manufacturing (2924)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. This case originated with a complaint letter reporting that Mr. Li and Huah Jenn Machine Co., Ltd. sent two warning letters in the form of attestation letters regarding a patent infringement to two of the complainant's clients on February 19, 2009. There were not any patent documentations or infringement authentication reports enclosed in the two letters. The sender of the letters simply accused the complainant of infringing upon the new domestic patent No. M306593 owned by the sender. The letters also alleged that the complainant had ceased using such patent and requested the letter recipients not to continue using any such products purchased from the complainant to avoid any liability of compensation. The complainant claimed that Mr. Li and Huah Jenn Machine Co., Ltd. violated the Fair Trade Law (FTL) by engaging in a conduct that was sufficient to affect the trading order.

2. Findings of the FTC after investigation:

(1) The letters in question as provided by the complainant contained only the name of "Li XX" but not "Huah Jenn Machine Co., Ltd." It was also found that these letters to the complainant's two trading partners did not contain any statements involving Huah Jenn Machine Co., Ltd. Huah Jenn Machine Co., Ltd. also denied any participation or knowledge of these letters. Mr. Li admitted that he himself sent

the attestation letters to the complainant and its trading partners to claim his own patent rights which were unrelated to Huah Jenn Machine Co., Ltd. The action in question here should be attributed solely to Mr. Li. Mr. Li was entitled to make products by himself or licensing others to do so with the patent rights he owned. Since the products might enter the market at any time, though the letters were sent in the capacity of an individual, his actions may still create impacts upon market competition of this industry competition. As a result, Mr. Li should still be subject to the FTL.

(2) Mr. Li respectively sent two attestation letters to two of complainant's trading partners on February 19, 2009. Mr. Li claimed in the letters that after the complainant was informed of the infringement of patent rights, it ceased using the product, "water saving device for high-temperature dyeing machines," as improved by the complainant and purchased by the two companies. Mr. Li further requested these two companies not to continue using the patented product in question to avoid any liability of compensation. It was found that Mr. Li did not submit the subject of Patent No. M306593 to any professional agency for authentication or obtain any authentication report. Neither was he granted a court decision with regard to the infringement of his patent rights, which was admitted by the respondent. It was also found that the warning letters in question did not provide any definite contents, scope of the patent rights, nor any concrete facts of the alleged infringement.

3. Grounds for disposition:

The conducts of Mr. Li's sending patent warning letters, failing to submit the subject of Patent No. M306593 to any professional agency for authentication or obtain any authentication report, failing to obtain a final court decision proving the patent right infringement, and failing to adopt any pre-procedural actions set forth in Items 3 and 4 of the FTC Guideline were not the proper behaviors to exercise one's patent rights at all and should be culpable in terms of commercial ethics. These conducts were obviously unfair and sufficient to affect the trading order, in violation of Article 24 of the FTL. Mr. Li was therefore imposed with an administrative fine of NT\$50,000.

Summarized by Peng, Wei-Cheng; Supervised by Wu, Lieh-Ling

Le-Huo-Da-Ren Co., Ltd.

948th Commissioners' Meeting (2009)

Case: Le-Huo-Da-Ren Co., Ltd. violated the Fair Trade Law by failing to disclose important trade information in its franchise recruitment process

Key Word(s): franchise, fail to fully disclose, trade information

Reference: Fair Trade Commission Decision of January 6, 2009 (the 948th Commissioners' Meeting), Disposition Kung Ch'u Tzu No. 099003

Industry: Wholesale of Fruit and Vegetables (4541)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The complainant was one of the franchisees of Le-Huo-Da-Ren (in transliteration) Co., Ltd. (hereinafter referred to as Le-Huo-Da-Ren) and entered into a franchise agreement with Le-Huo-Da-Ren in March 2009. However, prior to the commencement of the franchise relationship, Le-Huo-Da-Ren failed to disclose in writing the important trade information on "the relevant qualifications of the responsible person and major business manager of the franchiser in the relevant businesses."
2. Findings of the FTC after investigation: It showed that the franchise agreement entered into by Le-Huo-Da-Ren and the complainant failed to contain three sets of important information, namely the information on "the start date of the franchiser's engagement in the franchise business," the information on "contents and methods of the franchiser's assistance and training provided to the franchisees," and the information including "names and addresses of all of the franchiser's franchisees in the municipal city or county(city) where the franchisee's place of business is located, and the statistical information, for the previous fiscal year, on the numbers of all of the franchiser's franchisees and numbers of all terminated franchisees nationwide and in the municipal city or county(city) where the franchisee's place of business is located." Le-Huo-Da-Ren also failed to disclose such information via any electronic document. Additionally, though Le-Huo-Da-Ren claimed that it had disclosed

these three sets of information to the trading partner 10 days prior to the franchise relationship was contracted, it could not submit any written information to support its statements.

3. Grounds for disposition:

To ensure the fair competition in the franchise business and prevent franchisers from affecting the trading order by concealing important trade information in the franchise recruitment process, the FTC enacted the "Fair Trade Commission Disposal Directions (Guidelines) on the Disclosure of Information by Franchisers." This Guideline requires that any important trade information related to the franchise shall be provided to the trading counterpart in writing for reference. In the event that a franchiser conceals important trade information or impedes the trading partners from reviewing the agreement, which is obviously an unfair act sufficient to affect the trading order, the franchiser will be considered to have violated Article 24 of the Fair Trade Law. Le-Huo-Da-Ren was therefore imposed with an administrative fine of NT\$50,000.

Appendix:

Le-Huo-Da-Ren Co., Ltd.'s Uniform Invoice Number: 80086583

Summarized by Li, Shih-Che; Supervised by Liao, Hsien-Chou

10.2 Judicial Cases

Bao Tien Hao Housing Brokerage Ltd.

Taipei Supreme Administrative Court(2009)

Case: Taipei Supreme Administrative Court dismissed the appeal of administrative litigation by Bao Tien Hao Housing Brokerage regarding its violation of the Fair Trade Law

Key Word(s): housing brokerage, information concealment, advantageous position

Reference: Taipei Supreme Administrative Court Judgment (98) Pan-Tzu No. 1281

Industry: Real Estate Agencies (6812)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The appellee (Fair Trade Commission), based on the investigation initiated from a complaint by the public, determined that in December 2004 the appellant (Bao Tien Hao Housing Brokerage Ltd.) failed to disclose to the seller-principal that a potential buyer, Hsin Wan Tang, was willing to purchase the land at a higher price and has paid NT\$300,000 as the negotiation deposit. The appellant's behavior of making the seller to sell the land at a lower price through the appellant was deceptive and sufficient to affect the trading order. The appellee determined that the appellant violated Article 24 of the Fair Trade Law (FTL) and therefore, in accordance with the forepart of Article 41 of the same law, ordered the appellant to immediately cease the unlawful act starting from the next day after its receipt of the disposition decision and imposed an administration fine of NT\$500,000 in its Disposition Kung Ch'u Tzu No. 095119 of July 28, 2006. The appellant was dissatisfied and filed for an administrative appeal which was dismissed. It later filed for administrative litigation.

2. The appellant entered into a "Real Estate Agency Agreement" with the

complainant on November 29, 2004. The complainant entrusted the appellant to market the complainant's parcels No. 481 and 482-1 for a sales price at NT\$18.6 million and No. 482 for NT\$11.3 million. Later on December 9 of the same year, the potential buyer, Hsin Wan Tang, intended to purchase the parcels No. 481 and 482-1 for NT\$85,000 per ping (total around NT\$24 million). Tang later signed a negotiation deposit slip with and delivered the negotiation deposit of NT\$300,000 to the appellant requesting the appellant to negotiate the sales price with the complainant. The appellant knew the prices offered by both parties to the sale and that Hsin Wan Tang offered NT\$5.4 million more than the sales price provided by the complainant. However, the appellant failed to comply with its obligations as a broker to truthfully deal and coordinate with both parties to the trade. To the contrary, the appellant signed another "Real Estate Agency Agreement" with the complainant for a total sales price of NT\$27.6 million for all three parcels, No. 481, 482, and 482-1. In between, the appellant was in contact with two potential buyers, namely the original potential buyer, Hsin Wan Tang, and Kuan Wu, who was the nephew of the appellant's representative. Had the complainant learned about the fact that Hsin Wan Tang was willing to purchase the parcels located at No. 481 and 482-1, Section OO, Ta-Chia Township, Taichung County for NT\$24 million back on December 9, 2004, the complainant would definitely not have entered into a new contract with the appellant on January 2, 2005 to sell all three parcels for as low as NT\$27.6 million and drastically decrease his own profits by passing on Tang's offer of extra NT\$5.4 million. With the new total sales price set forth in the second "Real Estate Agency Agreement", the third parcel, No. 482, could be sold for only NT\$3.6 million after deducting the offer of NT\$24 million (the parcel was actually sold for NT\$3,260,000, i.e. less than NT\$30,000 per ping). The second "Real Estate Agency Agreement" provided a sales price that was NT\$7.7 million lower than the original sales price for parcel No. 482 set forth in the original agreement signed by the complainant on November 29, 2004. The parcels No. 481 and 482-1 were sold for NT\$85,000 per ping whereas No. 482 was sold for less than NT\$30,000 per ping. The price difference was almost tripled for these adjacent parcels and against the seller's interest. The appellant's statements that it did not conceal any trade information and

that the seller consented to the deal were inconsistent with the general rule of thumb. Accordingly, it was determined in the original disposition decision that the appellant used its advantageous market position in holding the information obtained through its business to deceive the complainant and conceal the information regarding the negotiation deposit receipt signed by the potential buyer and the payment of such negotiation deposit. Such behaviors were against the real estate brokerage's ethics that put emphasis on information transparency and truthfulness and therefore culpable from the perspective of commercial ethics. As a result, these activities constituted deceptive conducts sufficient to affect the trading order in violation of Article 24 of the FTL. The original decision and disposition are hereby upheld and the appellant's case dismissed.

Appendix:

Bao Tien Hao Housing Brokerage Ltd.'s Uniform Invoice Number: 16682446

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

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 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 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

THE FAIR TRADE LAW OF 2010

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;
Amendments 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.)
Amendment of Article 21 Promulgated on June 9, 2010.

Chapter I **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 providedr 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 exempted 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.

The act of a trade association to restrict activities of enterprises 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 II 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 approve an application for merger filed pursuant to the preceding article 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) 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 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 III 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. Where any testimonial provider provides any testimonials that he knows or is able to know is misleading, he shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom.

The testimonial provider set forth in the preceding paragraph shall refer to any person or organization, other than the principal of the advertisement, who expresses opinions, trust, findings, or results of personal experiences with regard to the goods or services.

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, Certified Public Accountant(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 IV 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 V 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 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 VI 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 VII 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 VI

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 VII

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 VIII

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 IX

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 X

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 XI

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 XII

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 XIII

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 XIV

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.

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 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.

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 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

(Deleted)

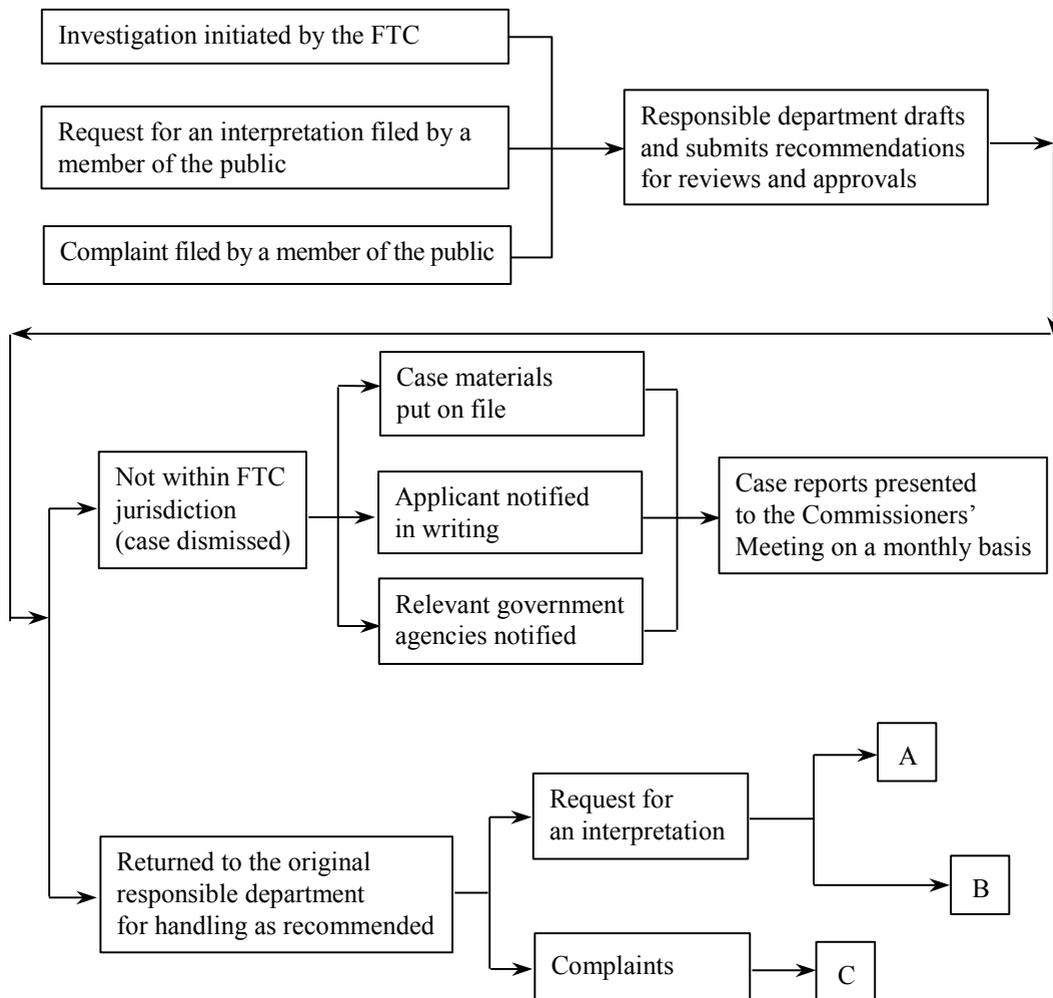
Article 26

The Regulations shall be in force from the date of promulgation.

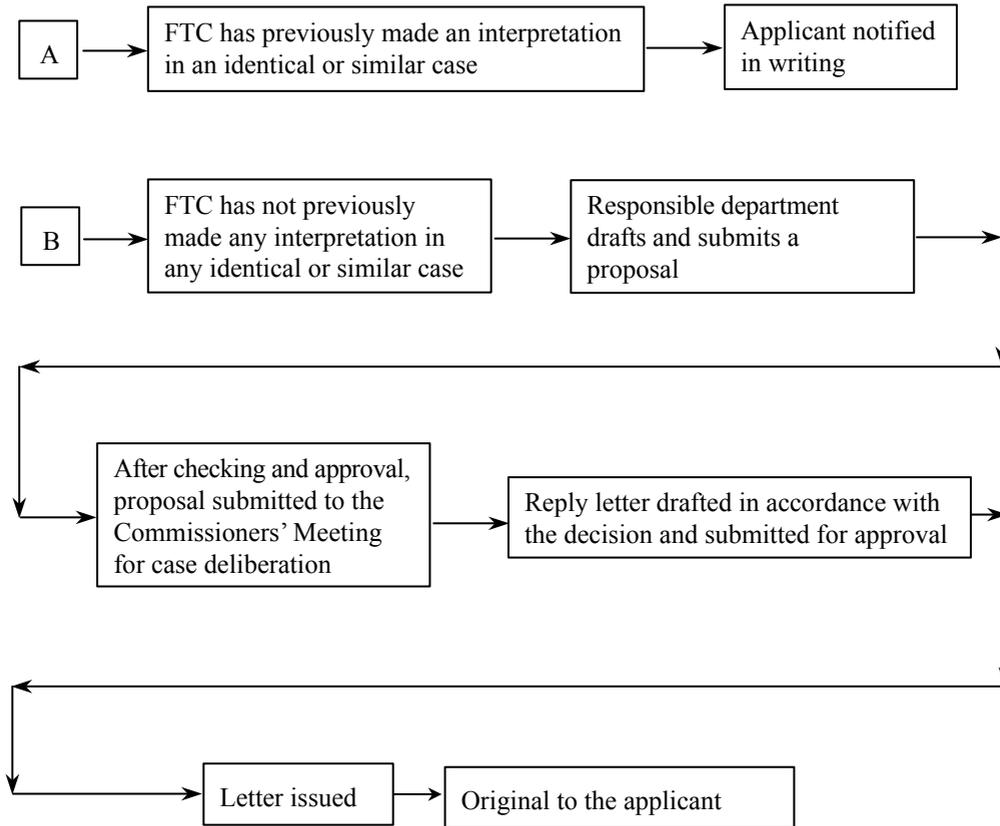
Appendix XV

Procedures for Handling Complaints and Requests for Interpretations of the Fair Trade Law

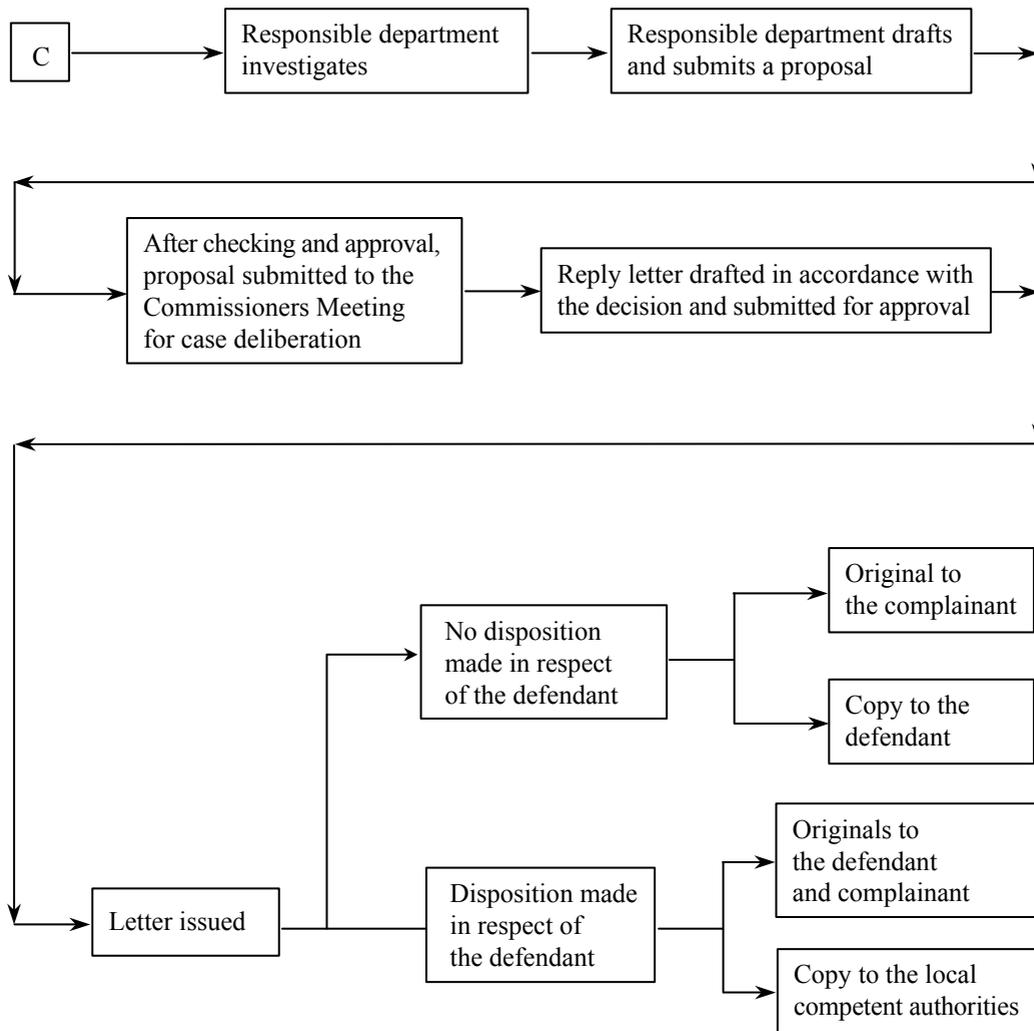
Application Procedures for Various Cases



I. Request for an Interpretation of the Fair Trade Law

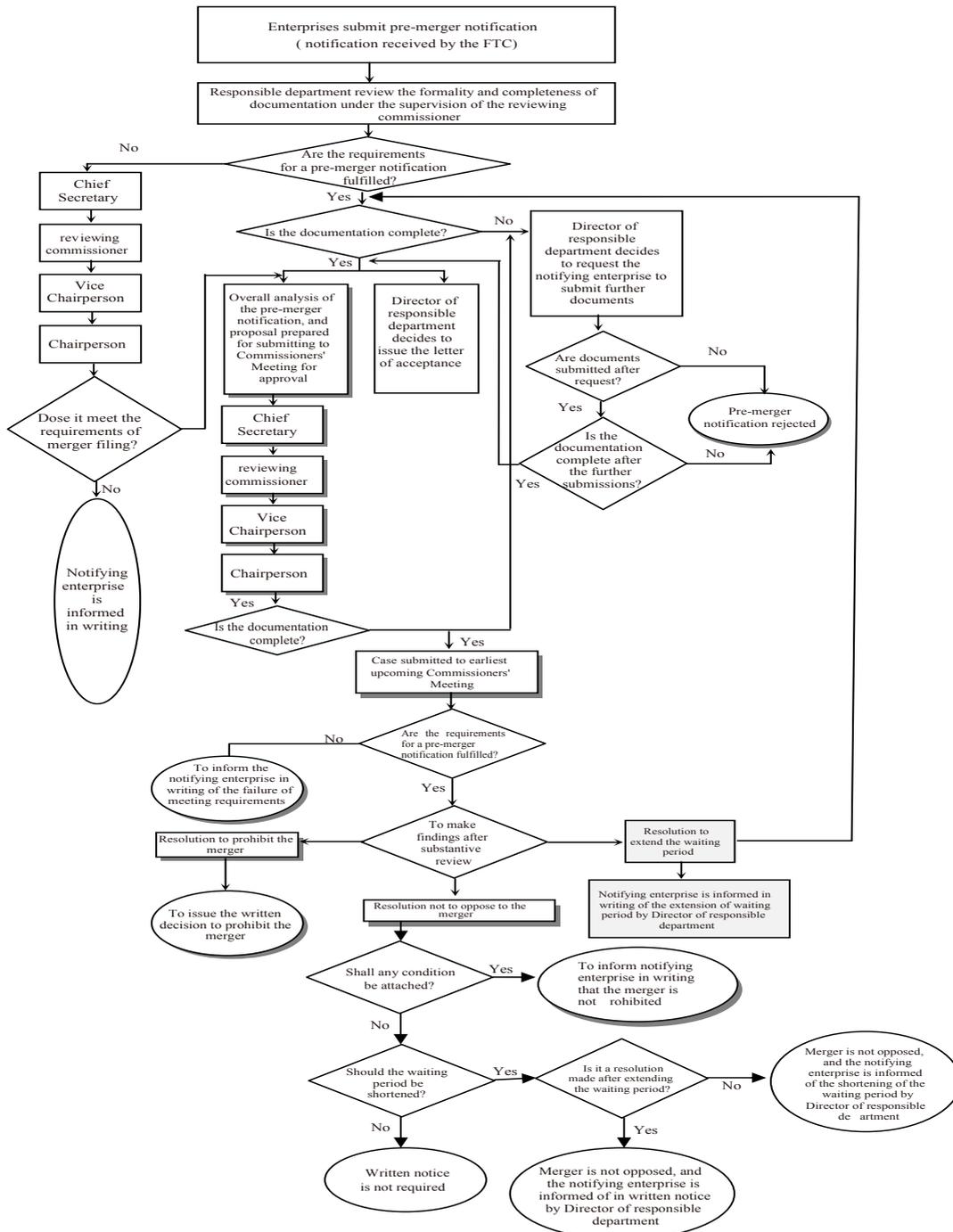


II. Complaints



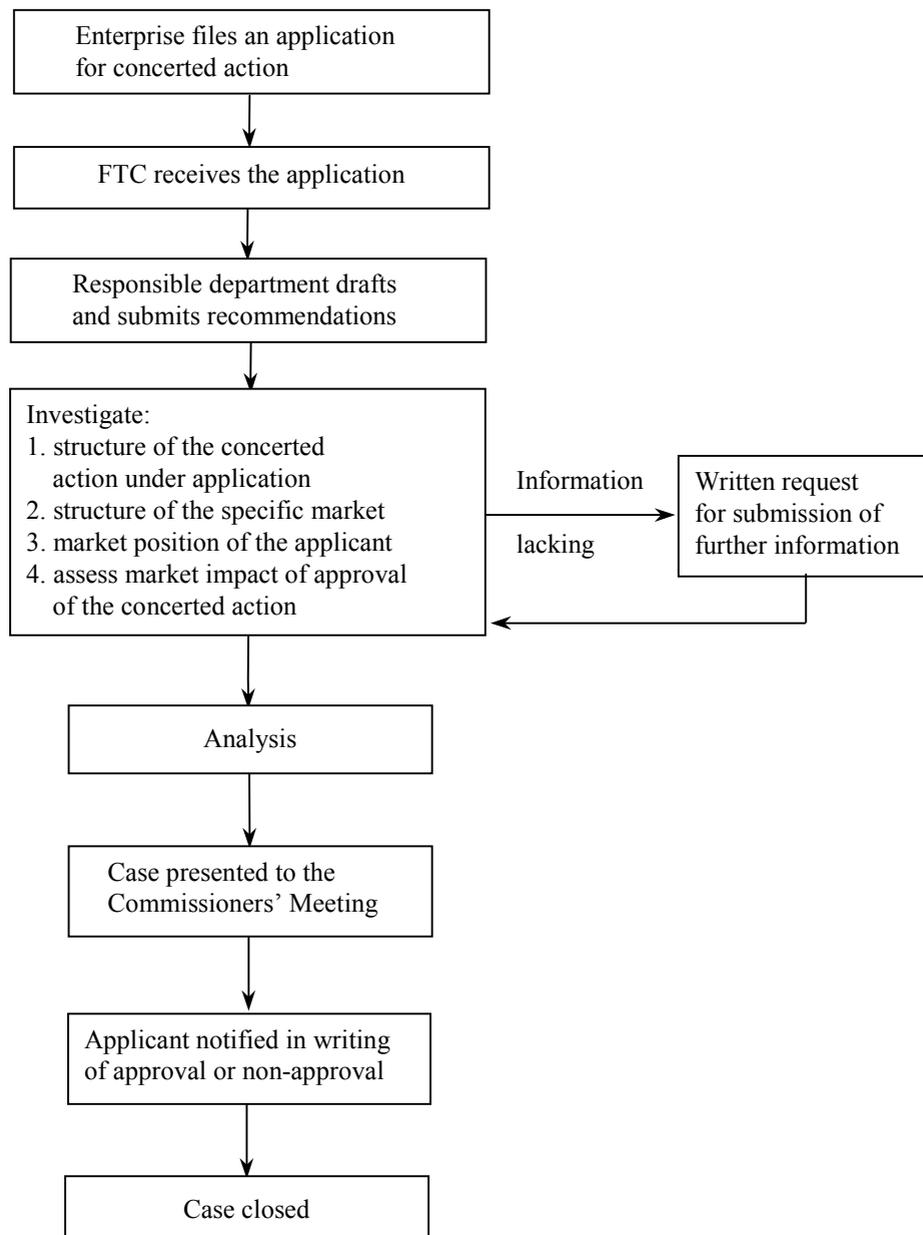
Appendix XVI

Procedures for Pre-Merger Notification by Enterprises



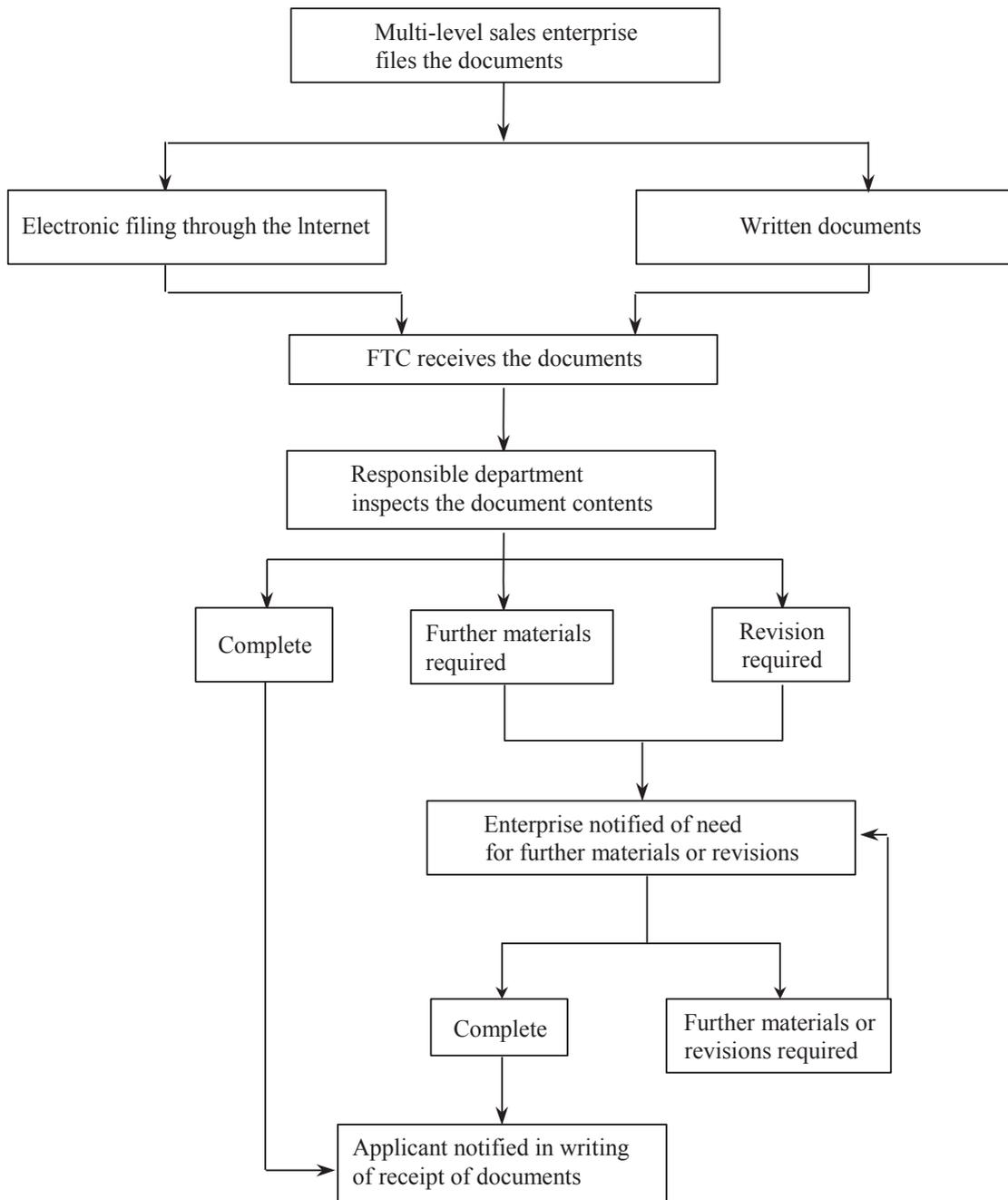
Appendix XVII

Procedures for Handling Applications for Concerted Actions of Enterprises



Appendix XVIII

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
871(01/16/08)	Taiwan Electronic Packaging Co. Ltd. violated the Fair Trade Law by issuing a warning letter	109
871(01/16/08)	DAIKIN Inc. violated the Fair Trade Law by publishing untrue advertisement of DAIKIN air conditioners	73
875(08/13/08)	Tofu Association of Kaohsiung City violated the Fair Trade Law by adjusting prices of traditional firm tofus	29
876(08/20/08)	Textbook publishing enterprises violated the Fair Trade Law by providing improper gifts in marketing	112
877(08/27/08)	Taoyuan County Trade Union of Personnel Engaging in Land Transaction violated the Fair Trade Law by stipulating a reference fee table of members' practices	33
878(09/03/08)	Mr. Chien, Pin-Shun violated the Fair Trade Law by making other enterprises, through other improper means, participating in a concerted action	67

879(09/10/08)	Uni-President Enterprises Corporation filed a pre-merger notification to the FTC regarding its intention to directly hold more than one third of the shares of Weilih Food Industrial Co., Ltd.	15
886(10/29/08)	Cheng An Construction Co. Ltd. violated the Fair Trade Law by failing to disclose information related to public facilities of a presale house	116
887(11/05/08)	The Bicycles Associations of Tainan City and Kaohsiung City violated the Fair Trade Law respectively by concluding a "Reference Wage List for Bicycle Assembly and Repair"	35
887(11/05/08)	Beansum Agricultural Products Co., Ltd. and five other enterprises violated the Fair Trade Law by borrowing or lending documents of company registration to participate in the tenders	118
893(12/17/08)	The National Development Initiatives Institute and Sailing Education Institute violated the Fair Trade Law by publishing an untrue advertisement	75
893(12/17/08)	Four cable TV system operators in Kaohsiung City violated the Fair Trade Law by monopolizing the cable TV market in Kaohsiung City	19
893(12/17/08)	Durban Group and Oak Park Construction Co., Ltd. violated the Fair Trade Law by publishing untrue advertisements	79

894(12/24/08)	Solano Biochemical Technology Co., Ltd., which operated a multi-level sales business, violated the Supervisory Regulations Governing Multi-level Sales by engaging in unlawful practice	103
894(12/24/08)	The programs of Formosa Television Co., Ltd., Sanlih E-television Co., Ltd., and CTV Cultural Enterprise Ltd. violated the Fair Trade Law by conducting an obvious unfair act	123
895(12/31/08)	"Yong Chien Advertised-Drug Association" and "Advertised-Drug manufacturer Association" violated the Fair Trade Law by jointly maintaining the price of advertised-drugs sold by local radio stations	37
897(01/14/09)	Tainan City Excavator & Bulldozer Operators Union violated the Fair Trade Law by formulating a price table of heavy-duty machines and tools	41
897(01/14/09)	Omni AAA Group (Taiwan) Co., Ltd. violated the Fair Trade Law by failing to file a written report on statutory items to the Commission prior to engaging in multi-level sales	105
898(01/21/09)	China Steel Corporation and Chung Hung Steel Corporation filed a pre-merger notification to the Commission regarding its intention to merge	7

901(02/11/09)	Uni-President Enterprises Corporation violated the Fair Trade Law by failing to file a pre-merger notification before it directly or indirectly controlled the business operation or the appointment or discharge of personnel of Weilih Food Industrial Co., Ltd.	22
903(02/25/09)	Taiwan Sugar Corporation was complained for violating the Fair Trade Law by selling Jiansu products	63
904(03/04/09)	Far Eastern International Bank violated the Fair Trade Law by unlawfully collecting penalty fees for mortgage payoff	125
906(03/18/09)	Las Vegas Co. violated Article 21 of the Fair Trade Law by making false advertisements while hosting "2009 World Circus and Children's Folkgame Fair"	83
906(03/18/09)	PresiCarre Co., Ltd. and Carrefour Taiwan Co. Ltd. violated the Fair Trade Law by posting the untrue advertisement of "get discount coupons of NT\$7,200 when spending up to NT\$3,600 with consumer vouchers"	85
908(04/01/09)	Taichung City and 3 other Chinese Medical Associations violated the Fair Trade Law by conducting in concerted action that regulated the "2007 Plan Controlling the Amount of Chinese Medical Doctors in the Central Region"	43
913(05/06/09)	Asia Pacific Telecom Co. Ltd. violated the Fair Trade Law by conducting in an untrue fee comparison and promotions advertisement on "Happy 888" package"	87

913(05/06/09)	Asia Pacific Telecom Co. Ltd. violated the Fair Trade Law by conducting in an untrue fee comparison and promotions advertisement on "Happy 888" package"	127
920(06/25/09)	The FTC extended the approval for concerted action on "Donggang-Xiaoliuqiu Line" with attached conditions	46
921(07/01/09)	Jiaxiang Box Lunch Food Processing Plant violated the Fair Trade Law by restricting price competition through the threat of withholding member certificate, signing check, affidavit, or other unlawful means	69
922(07/08/09)	Dafeng TV Ltd. and DigiTai TV Ltd. violated the Fair Trade Law by failing to file a pre-merger notification	25
923(07/15/09)	Taiwan Hitachi Co., Ltd. violated Article 21 of the Fair Trade Law by publishing untrue advertisement	89
924(07/22/09)	Formosa Oilseed Processing Co., Ltd. and 7 other enterprises applied to extend the concerted actions regarding shared shipping of soybean procurement	48
926(08/05/09)	Taipei Fuyi Art & Science Cram School violated the Fair Trade Law by disseminating untrue statements sufficient to damage other business' reputation	101
929(08/26/09)	Shin Tao Gas Pipeline Equipment Company violated the Fair Trade Law by improperly selling gas safety equipment in the pretext of gas safety inspections	129

930(09/02/09)	Oracle Taiwan LLC filed a pre-merger notification regarding its intention to conduct an extraterritorial merger with Sun Microsystems, Inc. in accordance with Article 11 of the Fair Trade Law	9
930(09/02/09)	Lien Hwa Industrial Corporation and 37 other enterprises applied to extend the concerted actions regarding shared shipping of wheat procurement	52
930(09/02/09)	MassMutual Mercuries Life violated the Fair Trade Law by improperly collecting housing loan prepayment penalty	132
933(09/23/09)	Yuan Chih Real Estate Brokerage Ltd. violated the Fair Trade Law by engaging in deceptive conducts sufficient to affect the trading order by neglecting to inform the homebuyers the rights to select between "Ministry of Interior Sample of the Offer Letter" and negotiation deposit	134
934(09/30/09)	Kuo Yang Construction Co., Ltd. violated the Fair Trade Law by posting untrue advertisement for the construction project of Southern California (Tahiti Ocean View District)	91

938(10/28/09)	Taipei Supreme Administrative Court dismissed the second appeal filed by the FTC against Royal Dutch Philips Electronics Ltd. and Sony Corporation of Japan with Taiyo Yuden Co., Ltd. for the violation of the Fair Trade Law and required the FTC reissue a proper ruling in accordance with the law	3
939(11/05/09)	The Fair Trade Commission initiated an ex officio investigation into the concerted increase of tobacco product prices by Taiwan Tobacco and Liquor Corporation, two other tobacco enterprises, President Chain Store Corporation, and two other major chain stores in violation of Article 14 of the Fair Trade Law	56
941(11/18/09)	Mr. Li and Huah Jenn Machine Co., Ltd. were complained for violating the Fair Trade Law by improperly mailing warning letters	137
942(11/26/09)	Amkey Co., Ltd. violated the Fair Trade Law by failing to report its alteration to its sales system to the FTC in accordance with the law	106
943(12/02/09)	Taiwan Mobile Co., Ltd. filed a pre-merger notification regarding its intention to merge with Sheng-Ting Co., Ltd., Kbro Co., Ltd., and 12 cable television companies controlled by Kbro	11
943(12/02/09)	Chiwe Industrial Co., Ltd. violated the Fair Trade Law by posting untrue advertisement about its product "Magical Environmental Protection and Efficient Laundry Balls"	94

946(12/22/09)	Yahoo! Taiwan Holdings Limited, Taiwan Branch (H.K.) violated Article 21 of the Fair Trade Law by claiming to be the "the largest used vehicles market in Taiwan" on its YAHOO! Kimo auction website	95
947(12/30/09)	Martinlee International Co., Ltd. violated Article 21(1) of the Fair Trade Law by publishing untrue online advertisement of its products	97
948(01/06/09)	Le-Huo-Da-Ren Co., Ltd. violated the Fair Trade Law by failing to disclose important trade information in its franchise recruitment process	139
949(01/13/09)	Uni-President Enterprises Corp. and 16 other enterprises applied to extend the concerted actions regarding shared shipping of corn procurement	58

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Taipei Supreme Administrative Court Judgment (98) Pan-Tzu No. 1281	Taipei Supreme Administrative Court dismissed the appeal of administrative litigation by Bao Tien Hao Housing Brokerage regarding its violation of the Fair Trade Law	141
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