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The Merger Between FET and Eight Music Publishers to Provide Online Digital Music Services Not Prohibited but Additional Conditions Imposed

The FTC decided at its 980th Commissioners' Meeting on August 18, 2010 to not prohibit the merger between Far Eastone Telecommunications Co., Ltd. (hereinafter referred to as FET), Avex Taiwan Inc., Forward Music Co., Ltd., Gold Typhoon Music Co., Ltd., HIM International Music Inc., Linfair Records Ltd., Sony Music Entertainment Taiwan Ltd., Universal Music Ltd., and Otiga Technologies to provide online digital music services in accordance with Article 12 (2) of the Fair Trade Act, but additional conditions were imposed.


The FTC considered the merger of the aforesaid nine companies to fits into the merger type defined in Article 6(1) (iv) of the Fair Trade Act. In addition, FET's acquisition of 50% of the shares as well as the rights of management and personnel appointment and dismissal of the new company also complied with Article 6(2) and (5) Since FET accounted for over one quarter of the mobile communications service market share and thus reached the threshold for filing the intended merger with the FTC and none of the circumstances described in Article 11-1 of the same applied, it was therefore

required to file the merger with the FTC in advance. The FTC would like to point out that the said merger encompassed horizontal as well as vertical merging and the product markets to be affected by this case would include the mobile communications service market, the online digital music market, and the music publication market. The FTC believed that approving the case would help promote competition in the mobile communications service and online digital music markets as well as increase the productivity and distribution efficiency of the upstream and downstream businesses in the mobile communications industry. The range, diversity and quality of services would be upgraded to better meet consumer demands. Meanwhile, the international competitiveness of domestic music publications and the online digital music industry would also be boosted and related R&D and creativity could be further stimulated. In addition, it could also bring overall economic benefits such as the promotion of the network externality from the consumer's aspect. However, the possibilities of concerted actions by music publishers and the formation of market blockades as a result of the approval remained the FTC's concerns.

Most related competent authorities, specialists and scholars, as well as concerned unions and associations concurred that the merger could bring overall economic benefits but, with regard to the disadvantages of competition restriction derived from this merger, suggested that the FTC keep track of the effect that the horizontal merger between music

publishers might bring to make sure the merger did not refuse to give music authorization to other online digital music services or apply differential treatment to other online digital music services without justifiable reasons.

Taking into consideration the music market structure and competition, opinions from various sectors, and industrial development, the FTC deemed the merger should not be prohibited. However, to prevent violations against the Fair Trade Act in the future as well as to ensure that the overall economic benefits would outweigh the disadvantages of competition restriction, the FTC acted in accordance with Article 12 (2) of the Fair Trade Act and imposed the three following conditions on the decision:

1. The applicants may not refuse to authorize other online digital music services to provide music products or grant exclusive authorization to or conduct business with only particular companies without justifiable reasons.
2. The applicants may not apply differential treatment in length of music authorization or other transaction terms with other online digital music services without justifiable reasons.
3. The applicants may not use the opportunity of joint management of the online digital music service to privately exchange important or sensitive information regarding music publication or undertake concerted actions. 


Yangming International Co., Ltd. Violated the Fair Trade Act for Deceptive or Obviously Unfair Conduct

The FTC concluded at its 1000th Commissioners' Meeting on January 5, 2011 that Yangming International Co., Ltd. (hereinafter referred to as Yangming Co.) had violated Article 24 of the Fair Trade Act by enticing consumers with an inappropriate claim regarding the profitability in purchasing and reselling extra packages when marketing its "Leidi Diamond Holiday" special tour package. The deceptive conduct had the potential to affect trading order and the company was served with an administrative fine of NT\$500,000.

A number of private citizens complained to the FTC that Yangming Co. verbally promised to help resell the extra packages customers purchased and even presented bankbooks of other buyers as proof of successful resales to persuade and make the customers believe that it was profitable to buy and resell extra packages. Some of them ended up believing it would be a good investment and even acquired loans to make the purchases.

The FTC discovered in the customer list provided by Yangming Co. that most customers made their purchases with the intention of making a profit from their resale. Therefore, whether reselling was possible became the key factor in the customers' purchasing decision. Most of them had never heard of Yangming Co. before and were not aware of the market practices for this type of product. As a consequence, they learned about the product only

through the description from Yangming Co. and the afore-mentioned verbal promise and presentation of sales records were sufficiently effective to make certain people believe that it was profitable to buy and resell extra packages. The findings from the FTC's investigation, however, revealed that the actual percentage of successful resales was rather low. Obviously, Yangming Co. had concealed the fact that there was a low resale percentage when making promises and showed a limited number of successful resale records in order to push the customers to make the purchasing decision.


The number of people misled by the deceitful sales approaches that Yangming Co. adopted was not at all small. As the company continued to market the Leidi tour package, the likelihood that more people would be deceived by the inappropriate marketing was high. Therefore, the FTC considered the act of Yangming Co. to entice consumers with promised assistance to resell the extra packages purchased, as well as to provide a limited amount of evidence of a successful resale, while concealing the actual low percentage of successful resales to convince them to make purchases, to be deceptive conduct with the potential to affect trading order and in violation of Article 24 of the Fair Trade Act. The FTC therefore ordered Yangming Co. to cease the unlawful act and served it with an administrative fine. 

The FTC Approved a Concerted Action between TTET Union Corp. and Four Other Enterprises

The FTC decided at its 1008th Commissioners' Meeting on March 2, 2011 to approve a decision by TTET Union Corp., Uni-president Enterprise Corp., Dachan Great Wall Group, Taihwa Oil Industrial Co., Ltd., and Land O'Lakes Co., Ltd. to extend the concerted actions regarding shared shipping of soybeans procurement for another three years in accordance with Article 14(1)(v) and Article 15(2) of the Fair Trade Act. The approval will expire on March 12, 2014.

In considering that the domestic production of certain important daily commodities relies on the importation of raw materials, such as wheat and soybeans, and the recent rises in international food prices have elevated the production costs of related businesses, the FTC has over the years always accelerated the review process for applications for joint purchases of bulk commodities like wheat and soybeans in the hope of helping the businesses decrease their import costs and thus reduce the burden of consumers. On this occasion, the FTC conducted an investigation after receiving the application from TTET Union Corp and the four other enterprises for an extension of their joint shipping of imported soybeans and the findings showed that such concerted action could indeed reduce the costs of soybean importation, alleviate the upward pressure on the price of cooking

oil, and stabilize the prices of soybean products. As the influence on the overall economy and public interest would be positive, the FTC therefore approved the extension. Nevertheless, to prevent malpractices, the FTC also attached additional conditions to the approval and forbade the applicants as a group from restricting any single member from becoming a part of other joint shipping ventures or bringing in soybeans on its own. At the same time, the approval could never be applied as a justification for other concerted actions.

The FTC has always been greatly concerned about the competition in the markets for daily commodities. This time, the aforesaid enterprises acted in line with Article 14(1)(v) and Article 15(2) of the Fair Trade Act and applied for approval to extend their shared shipping of imported soybeans. The FTC, besides granting the permission after the assessment conducted on related factors showed that such an action could benefit the overall economy and public interest, also appealed to all concerned businesses to have empathy for one another during such a period of unstable price fluctuations, to make efforts to help maintain trading order and consumers' interests, and to continue to observe the Fair Trade Act. 

Hocheng Corporation Violated the Fair Trade Act for Restrictions on the Business Activities of the Counterparts.

The FTC reached a decision at its 1000th Commissioners' Meeting on January 5, 2011 that the sales price restriction that Hocheng Corporation (hereinafter referred to as HCG) had imposed on its trading counterparts under the excuse of its "bathroom equipment price policy" as well as the company's request to concerned parties to establish case-by-case reports and apply for cross-district supply approval and coordination were illegitimate restrictions on the business activities of the trading counterparts. The actions were respectively in violation of Article 18 and Article 19(vi) of the Fair Trade Act. The company was ordered to immediately cease the unlawful acts upon receiving the disposition and was served with an administrative fine of NT\$3,000,000.


The findings of FTC's investigation revealed that HCG had imposed on the smaller retailers of its products the "bathroom equipment price policy" according to which retail prices or discounts for various bathroom supplies were stipulated. With construction projects that required larger quantities of such supplies, HCG demanded that concerned parties establish case-by-

case reports. All the distributors had to abide by the stipulated discount rates when selling the products. The conduct, which restricted the distributors from determining their sales prices and infringed upon the market mechanism of competition between dealers of products by the same maker, had violated Article 18 of the Fair Trade Act.

In addition to the aforesaid illegal conduct, HCG had also imposed restrictions on the retailers of its products to prevent them from trading freely when seeking business opportunities to sell to construction projects and demanded that the concerned parties establish case-by-case reports and apply for approval and coordination when cross-district transactions were involved. Such conduct was an illegitimate restriction on the business activities and transactions of the trading counterparts and had the potential to impose restrictions on competition or obstruct fair competition. Judging from the market status of HCG and the structure of the bathroom equipment market, the purpose of this conduct was to maintain the company's market status or limit competition between dealers of products by the same maker. Even though the said conduct did not prevent other competitors

from entering the market, by setting restrictions on the scope of business operations and the clients of the trading counterparts and reducing competition between dealers of products by the same maker, the company had already violated Article 19(vi) of the Fair Trade Act.

After evaluating the motive and purpose of HCG's unlawful behavior, the damage created to trading

order, the company's profit, management and market status, and the demand the company had once imposed in 1996 on distributors to request them to abide by the "cross-district operation management regulations" stipulated in the "distributor contract," the FTC considered HCG to be in violation of Article 19(vi) of the Fair Trade Act and hence made the aforesaid disposition. 

Lung Shan Lin Enterprises Co., Ltd. Violated the Fair Trade Act for Deceptive or Obviously Unfair Conduct

The FTC reached a decision at its 1000th Commissioners' Meeting on January 5, 2011 that Lung Shan Lin Enterprises Co., Ltd. (hereinafter referred to as Lung Shan Lin Co.) had violated Article 24 of the Fair Trade Act for failing to disclose in the presale house contracts that the parking lot driveways were part of the common area of the compound. As the deceitful conduct had the potential to affect trading order, the company was ordered to immediately cease the unlawful act and was served with an administrative fine of NT\$12,000,000.

Since division of the common property involves the total area of the object of transaction in presale house purchases, it can be a critical factor in potential buyers' purchasing decisions. Due to the fact that shares on common area of presale house affect the calculation of the area of the subject real estate and is an important trade information in the buyer decision making of whether to enter into the trade; further, since the presale house title is not yet registered, the buyer is unable to obtain relevant information from the Land Office and should the building developer fails to disclose complete information in the contract, may be considered to be deceiving the trade counterpart. Hence the building developer should in the sales contract list all items in the individual share of the common area, area of the common area or results of

shared percentage calculation, individual household's full title holding chart should show the result of the common area calculation for the entire community. The investigation conducted by the FTC revealed that the total floor area of the "Lung Shan Lin Art Gallery" housing project that Lung Shan Lin Co. marketed was 9,929.73 pings, but the registered deeds showed a total floor space of 10,392.73 pings. At the beginning of the investigation, Lung Shan Lin Co. explained that the increase of 463 pings had been a result of "errors generated during engineering." Later, the company rejustified the increase as a consequence of a change in design of the public facilities. In the end, the company admitted that the original intention was to have parking space buyers share the cost of the parking lot driveways. However, since all the homeowners would be using the basement space, the driveway area was then evenly divided among all the buyers. The question arose because the common area listed in the presale contracts never included the driveway area and Lung Shan Lin Co. registered it as part of the common area to be divided by all the units without indicating it in the contracts or disclosing the information to potential buyers. Then, based on the increased area, the company acted in accordance with the price difference make-up agreement stipulated in the contracts and requested that each

buyer pay for the 1% area increase and, in so doing, obtained a large amount of illegal profit.

When marketing “Lung Shan Lin Art Gallery”, the company never disclosed in the contracts that the parking lot driveways were part of the common area. The registration of the common area in the deeds was apparently an act of abuse of the disadvantageous status of the trading counterparts in the acquisition of related information. It constituted a purposely deceitful withholding of important transaction information to lead buyers to make the purchasing decision. The conduct against common social decency and the business competition ethic to gain a high volume of interest was deceitful behavior with a negative impact on trading order and in violation of Article 24 of the Fair Trade Act.

As for the immense fine handed out this case, the FTC would like to point out that when buyers enter a transaction contract for a presale house, they have limited access to related information. On top of this, unlike other consumable commodities, presale house buys are “high value” and “less mobile” Most consumers probably only make one such purchase in their entire life. In this case, the building developer took advantage of the unequal access to related information and withheld important transaction information, and, as a result, each homebuyer had to pay for the area originally not included in the contract and thus faced an extra financial burden. As the number of trading counterparts involved was large, the impact was serious. Therefore, a large fine was

decided.

The FTC would like to remind all consumers to closely examine the areas and types of public facilities as well as the division of the common area listed in the contract when buying a presale house. They should also inspect the actual size of different spaces when the finished home is turned over to them and make sure the public facilities are consistent with those stipulated in the contract. In particular, when a building developer makes requests for payments not included in the contract, buyers must demand clarification of the reasons for such payments. The FTC also wishes to make clear that severe punishments will be meted out to building developers who act without justifiable causes and register any public facility space not listed in the original contract as part of the property of any trading counterpart to gain illegitimate profit. For such misconduct, there will be no leniency.



Statistics on Complaints Filed

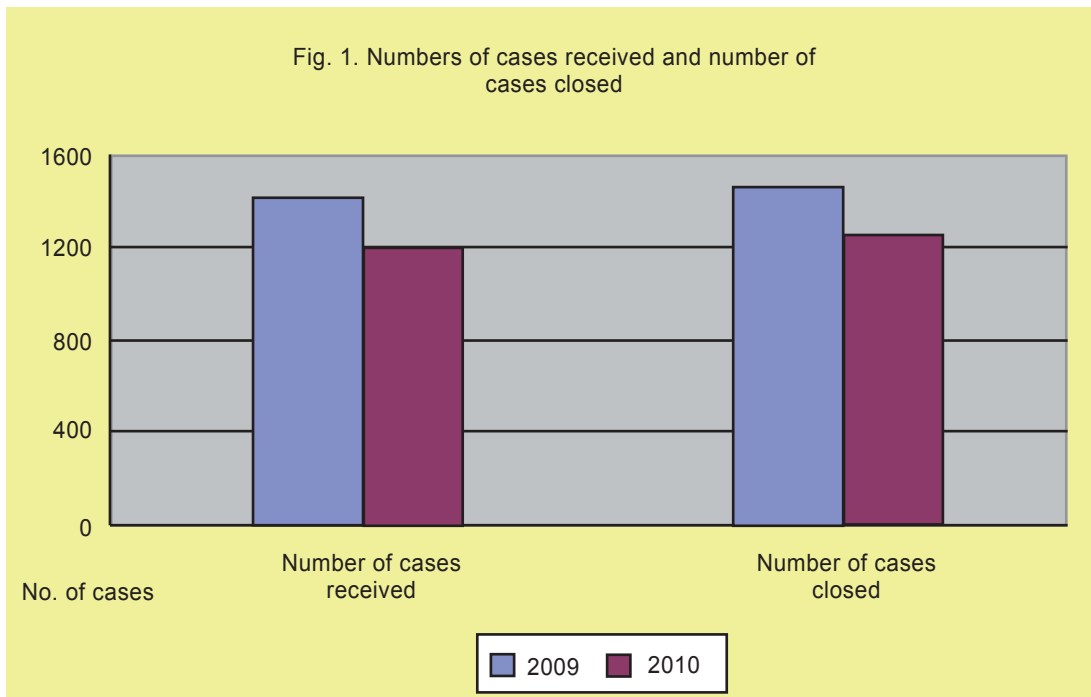
In 2010, 1,206 new complaints were filed and, together with 194 unclosed cases from 2009, 1,400 cases were investigated and processed. 1,243, or 88%, of these cases were concluded. The results of the analysis conducted on the closed cases are as follows:

1. According to the sources of the complaints, 76 cases (6.1%) were referred to the FTC in writing from central government agencies and 118 cases (9.5%) from county/city governments. These two sources accounted for 15.6% of the complaints and

the remaining complaints came directly from private individuals and companies.

2. According to the identities of complainants, 991 cases (79.7%) were reported by general public and 177 cases (14.2%) by business firm. The two types totaled 93.9% of the cases reported.

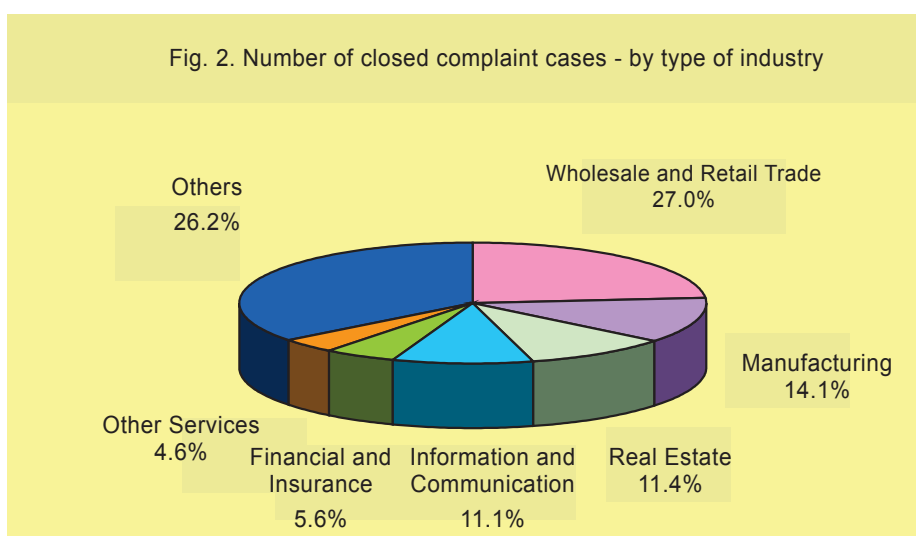
3. According to the identities of complained entities, 1,098 cases (88.3%) were reported against business firm and 80 cases (6.4%) against general public. The two added up to 94.7% of all the cases reported.



4. Industries of complained entities, the top six industries were wholesale and retail trade, 335 cases (27.0%); Manufacturing, 175 cases (14.1%); Real estate, 142 cases (11.4%); Information and communication, 138 cases (11.1%); Financial and insurance, 70 cases (5.6%); and other services, 57 cases (4.6%). These six industries accounted for 73.8% of the total number of these complaints cases.

Statistics on closed complaint cases in 2010 – by identity
2010

Type of Complainant	No. of Cases	Percentage (%)	Type of Complained Entity	No. of Cases	Percentage (%)
Total	1,243	100.0	Total	1,243	100.0
General Public	991	79.7	General Public	80	6.4
Business Firm	177	14.2	Business Firm	1,098	88.3
Foundation	15	1.2	Foundation	6	0.5
Industrial, Business or Freelancer Organization	8	0.6	Industrial, Business or Freelancer Organization	11	0.9
Government Agency	37	3.0	Government Agency	25	2.0
Cooperative	-	-	Cooperative	1	0.1
Others	15	1.2	Others	22	1.8



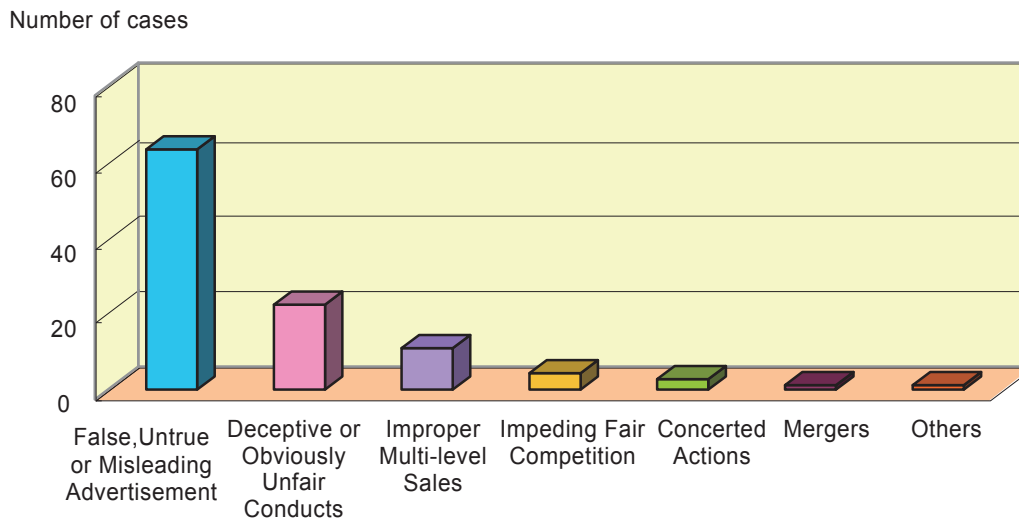
Note: The term “others” includes agricultural, forestry, fishery, and livestock operations, mining and quarrying, electricity and gas suppliers, water supply and remediation services, construction, transportation and storage, accommodation and food services, professional scientific and technical services, educational, human health and social work services, art, entertainment and recreation, public administration and defense and compulsory social security, support services, and other professions or individuals that cannot be categorized.

5. According to the type of illegal action, 109 decisions were handed out and 87 cases involved unfair trade practice, with 67 cases (61.5%) comprising false, untrue and misleading advertising (in violation of Article 21 of the Fair Trade Act), 22 cases (20.2%) consisting of deceptive obviously

unfair conducts (Article 24), 9 cases involving anticompetitive practice, 5 involving the impeding fair competition (Article 19), 3 involving concerted actions (Article 14), and 12 (11%) involving improper multi-level sales (Article 23 and Article 23-1 to Article 23-4).



Fig. 3. Number of decisions-by type of illegal action 2010



FTC Activities in January and February 2011

- ▲ On January 7, the FTC held a seminar to discuss “Whether the Conduct Described in Article 19 (iii) of the Fair Trade Act Is Indeed Unfair Competition”.
- ▲ On January 18, Associate Professor Chen Chih-Min (Andy) of the Department of Financial and Economic Law of Chung Yuan Christian University was invited to speak on the special topic of “The Carrot or the Stick? – A Theoretic Analysis and Practical Countermeasures of US and EU Handling of International Cartel Cases”.
- ▲ On January 20, Professor Chang Chin-ou of the Department of Land Economics of National Cheng Chi University was invited to speak on the special topic of “Real Estate Transaction Behavior and

Information Transparency”.

- ▲ On February 15, Associate Professor Hsieh Kuolien of the College of Law of Shih Hsin University was invited to speak on the special topic of “An Analysis of the New Criteria Resulting from the EU’s Handling of Abuse of Market Dominance in the Intel Case”.



1. Associate Professor Chen Chih-Min (Andy) of the Department of Financial and Economic Law of Chung Yuan Christian University speaking on the special topic of “The Carrot or the Stick? – A Theoretic Analysis and Practical Countermeasures of US and EU Handling of International Cartel Cases and Practical Countermeasures”.
2. Members of the public listening to Associate Professor Chen Chih-Min (Andy)’s keynote speech.
3. Professor Chang Chin-ou of the Department of Land Economics of National Cheng Chi University speaking on the special topic of “Real Estate Transaction Behavior and Information Transparency”.
4. Associate Professor Hsieh Kuolien of the College of Law of Shih Hsin University speaking on the special topic of “An Analysis of the New Criteria Resulting from the EU’s Handling of Abuse of Market Dominance in the Intel Case”.

International Exchanges in January and February 2011

On January 10, 13, 17, 19, 25, 31, February 9 and 10, the FTC participated in the ICN Operational Framework, Advocacy, Cartel, and Merger Working Group conference calls as well as participation in conference call for the annual conference special projects respectively.

From February 14 to 18, the FTC attended the 111th meeting of the OECD “Competition

Committee” and the “Global Forum on Competition”.

On February 23, the FTC held the Taiwan-New Zealand Bilateral Meeting.



1.FTC Commissioner Dr. SUN, Lih-Chyun attended the 111th meeting of the OECD “Competition Committee” and the “Global Forum on Competition”.



2.Chair of New Zealand Commerce Commission Dr. Mark Berry (left) with FTC Chairman Dr. Wu, Shiow-Ming.

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