

Cashbox Partyworld Co., Ltd.

Supreme Administrative Court (2016)

Case: Supreme Administrative Court overruled the administrative litigation filed by Cashbox and Holiday over FTC sanctions for their violation of Fair Trade Law

Keyword(s): KTV service, joint management

Reference: Supreme Administrative Court Judgment (2016) Pan Tzu No. 428

Industry: Operation of Audiovisual and Singing Facilities (9322)

Relevant Law(s): Article 11 of the Fair Trade Law in effect at the time of conduct (the same Article of the current version)

Summary:

1. Appellants Cashbox Partyworld Co., Ltd. (hereinafter referred to as appellant Cashbox Partyworld) and Holiday Entertainment Co., Ltd. (hereinafter referred to as appellant Holiday) (both together referred to as the appellants) often engaged in joint management and the situation complied with the merger pattern described in Subparagraph 4 of Paragraph 1 of Article 6 of the Fair Trade Law before the amendment on Feb. 4, 2015 and the sales of both appellants also achieved the merger filing threshold specified in Subparagraph 1 of Paragraph 1 of Article 11 of the same Law while the proviso prescribed in Paragraph a of Article 11-1 did not apply. In other words, the appellants had to file a merger notification as required by law but failed to do so. It was in violation of Paragraph 1 of Article 11 of the Fair Trade Law at the time of their conducts. Consequently, the appellee (the FTC) cited Paragraph 1 of Article 13 and Paragraph 1 of Article 40 of the same Law and issued the Disposition Kung-Ch'u-Tzu No. 103051 on Apr. 28, 2014 to order the appellants to make necessary corrections within three months after receiving the disposition. In addition, the FTC imposed administrative fines of NT\$5 million and NT\$4 million on appellant Cashbox and appellant Holiday respectively. The appellants found the sanctions unacceptable and filed a petition, which was overruled later. The appellants then filed an administrative litigation which was also overruled eventually. As a result, they filed this appeal.
2. The main business item of the appellants was providing consumers with audiovisual and singing equipment for entertainment. Together both appellants accounted for over one third of the domestic KTV service market. Meanwhile, the appellants made the decision to rent the 4th and 5th floors of a building on Zhongxiao East Road to be their offices. The same team of personnel was responsible for the termination of the leases for their original offices, handover of the properties, and relocation to the new sites. All the telephone and Internet equipment needed for operation was installed by the same personnel. Appellant Holiday also paid the bills for the phones used for consumers to make reservations at different outlets of appellant Cashbox. The employees of both appellants worked in the same office space and processed both companies' documents, employee benefits, and product procurement. The purpose obviously was to undergo internal consolidation with the purpose of cutting down their operating costs and share

resources. Based on the facts stated above, the appellee concluded that the appellants were engaging in joint management on a regular basis as described in Subparagraph 5 of Paragraph 1 of Article 6 of the Fair Trade Law at the time of their conducts whereas both companies also achieved the merger filing threshold specified in Subparagraph 1 of Paragraph 1 of Article 11 of the same Law while the proviso prescribed in Article 11-1 did not apply. In other words, the appellants had to file a merger notification but did not do so. It was in violation of Paragraph 1 of Article 11 of the Fair Trade Law. As a result, the FTC cited Paragraph 1 of Article 13 and Paragraph 1 of Article 40 of the same Law and maintained the original decisions to order the appellants to make corrections within three months after receiving the disposition. In addition, the administrative fines of NT\$5 million and NT\$4 million on appellant Cashbox and appellant Holiday were imposed respectively. The decision was consistent with the ruling on the appeal and did not contradict any law.

3. As described above, the Supreme Administrative Court sustained the original decision and rejected the appeal from the appellants over the decision made by the court of the first instance. The appeal was intended to contest that the original ruling had violated related laws and regulations and it should be abolished. However, the Supreme Administrative Court found the reasons unsound and rejected the appeal.

Appendix:

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

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

Summarized by: Lai, Chia-Ching; Supervised by: Ren, Han-Ying