

Evaluation of Law Amendment and Supervision of Multi-level Marketing

I. Research Background

Multi-level marketing (MLM) in Chinese Taipei was not regulated by an independent law, and was instead included in the Fair Trade Law. The Multi-level Marketing Supervision Act was promulgated by the President and took effect on January 29th, 2014. The MLM Supervision Act specified the Fair Trade Commission (FTC) as the competent authority and entered into a new era for MLM supervision. Yet, MLM companies are constantly evolving, such as providing more services, cross-border marketing via the internet, cross-industry alliance between MLM and e-commerce, and new forms of MLM. How should the FTC serve the role of competent authority set forth in the MLM Supervision Act to achieve healthy development of the MLM industry? Are there any difficulties with applying the FTC's current supervision mechanisms under the MLM Supervision Act and is it necessary to make any adjustments? Hence, this study titled "Evaluation of Law Amendment and Supervision of Multi-level Marketing" first analyzes contents of the MLM Supervision Act and the FTC's current supervision mechanisms. It then categorizes new business models of MLM companies encountered by the FTC, and then uses cases and dispositions of the FTC to determine if existing supervision mechanisms are adequate. Results of the evaluation will serve as a basis for future MLM supervision by the FTC and amendment to the MLM Supervision Act.

II. Research Methodology and Process

This study first analyzes the MLM Supervision Act and current supervision mechanisms of the FTC. It then learns the industry's current situation from investigations conducted by the FTC into the development of MLM from two years before to two years after the MLM Supervision Act was enacted. Violations of the MLM Supervision Act and data on the MLM supervision system are then analyzed to find new MLM models and derived issues. The cases are then categorized and analyzed to provide recommendations for future amendment to the MLM Supervision Act, as well as administrative supervision. Chapters of this study are arranged as follows: Chapter one is an introduction. Chapter two analyzes the MLM Supervision Act and supervision mechanisms of the FTC, which serves as the basis for recommending future amendment to the MLM Supervision Act and the FTC's administrative supervision when combined with the case study. Chapter three is divided into two sections, the first section analyzes investigation reports on MLM companies from two years before to two years after the MLM Supervision Act was enacted, providing an overview of the MLM industry, characteristics, and

development trends during that period of time; the second section compares data on the MLM supervision system and related cases to find new MLM models and derived issues after the MLM Supervision Act was enacted. Chapter four analyzes cases after the MLM Supervision Act was enacted, practices of the FTC and difficulties it encountered, and proposes response measures, which serves as a basis for future law amendment and supervision measures. Chapter five gives the conclusion and recommendations for amending the MLM Supervision Act and changes to administrative supervision.

III. Recommendations

Based on the conclusion above, this study makes the following recommendations for amending the MLM Supervision Act and the FTC's supervision measures:

- (I) "The sharing economy" is a concept that was gradually adopted by MLM companies, and some are working with or has formed cross-industry alliances with e-commerce platforms to market and sell products or services. Even though the MLM Supervision Act does not limit the types of products or services sold by MLM companies, Paragraph 1 of Article 6 requires MLM companies to submit required documents and materials to the FTC before starting MLM. However, it is not uncommon for companies to claim that the products or services they are marketing or selling are new MLM models different from typical MLM companies. Yet, the uniqueness of their business model cannot be determined based on an objective price or cost or the standard for depreciation cannot be evaluated, which can easily result in the product or service becoming an empty claim and result in deterioration that impacts individuals and the society. Hence, report and review should be strengthened in response to this issue, and the FTC should immediately search for related data online or conduct on-site investigations when it discovers or receives a report of unusual situations, in order to immediately stop any illegal MLM practices. The FTC should implement MLM supervision via inspections and transfer to prosecutor's office, which SOPs are already in place. Meetings should be periodically convened to review issues discovered by staff members with new MLM models, and discuss amendments to the MLM Supervision Act and related laws. This will allow the basis of law enforcement by the FTC to keep up with the rapidly changing MLM industry, achieve effective supervision, maintain the industry's sustainable development, and protect the rights of distributors.
- (II) Based on the case analysis, this study found that cases and disputes between different authorities are often derived from the products or services of MLM companies falling under the jurisdiction of or violating laws of other competent

authorities. Hence, if products or services of MLM companies are suspected of violating the MLM Supervision Act, current administrative supervision mechanisms, or laws of an industrial competent authority, the FTC should request the industrial competent authority's opinion and determine if permission from the industrial competent authority is necessary based on the opinion.

(III) Based on the FTC's experience with MLM cases, citizens may have insufficient risk awareness when participating in new MLM companies. Hence, in addition to periodically issuing warnings of MLM transactions, the FTC may establish a mechanism for contacting the Department of Prosecutorial Affairs, Investigation Bureau, National Police Agency, and Financial Supervisory Commission, in order to jointly establish a crime prevention network. The FTC should continue to supervise and provide guidance to the MLM Protection Foundation to protect legitimate MLM companies and their distributors, and collaborate with MLM related organizations (Taiwan Association of MLM, Taiwan R.O.C. Direct Selling Association, and Direct Selling Supervision Association) when appropriate. The FTC may review cases and their impact at any time to determine if it is necessary to amend the MLM Supervision Act.