Fair Trade Commission

【FTC Newsletter】

No.014

March, 2009

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Land Administration Personnel may not Jointly Set Fee Collection Standards

It is not at all easy for members of the general public to save sufficient amounts of money to buy houses. When these people register transfers of real estate, what are the fees that they must pay to land administration personnel for their services?

Are the concerned fee collection standards reasonable? The public usually finds them unclear and is at a loss as to what to do.

Generally speaking, the registration of transfers of real estate by the public involves those parts handled by land administration agents, which mainly include more than thirty items, for example, the preservation of registration; inheritance, gifts, and registration of trust ownership transfer; the registration of ownership transfers such as sales and purchases, exchanges, auctions, rulings, and the division of common property; the registration of rights of other items (superficies, mortgages, liens, easements, permanent leases, and the registration of creation and the transfer of cultivation); the registration of the division of uncommon property; cancellation, deletion, changes of descriptions, changes of names, addresses and administrators, changes of contents of rights, restrictions, correction, the registration of re-issuance (changes) of certificates of rights, and items that fall under the registration of other rights, but have not been prescribed.

As land administration personnel may not have had books to record and preserve evidentiary documents, or cannot provide books, papers and receipts that prove incomes, the Ministry of Finance stipulates that the "Professional Practitioners' Revenue Standards Adjusted by the Tax Authorities" be used to estimate each of the operating revenues of the land administration personnel.

The main objective of the "Professional Practitioners' Revenue Standards Adjusted by the Tax Authorities" stipulated by the Ministry of Finance is to estimate revenues of land administration personnel so as to facilitate the calculation of the personnel's taxes – the Standards do not really represent the fee collection standards of the personnel. As the types of applications of each kind of land administration are numerous and the level of difficulty differs, as well as the fact that there are urban and rural cost differences, it is indeed difficult to clearly formulate fee collection standards. Therefore, consumers not only choose to trade with land administration personnel who work closer to their homes, or are introduced by family members or friends and are hence more trustworthy, but they also take into consideration details of the fees collected by each practitioner and the quality of service.

The operating scales of land administration personnel are usually smaller and land administration personnel tend to be more scattered over geographical areas, thus causing consumers to incur high costs of searching for these practitioners. Nevertheless, if land administration personnel come to a mutual understanding which stipulates a reference table for each fee they collect, they thereby restrict each other from engaging in price competition, and as a result of these circumstances, these practitioners' acts are sufficient to affect the function of supply and demand in the land administration service market, and may constitute a concerted action as referred to in the Fair Trade Act. If a trade union of land transaction personnel seeks to persuade its members to jointly raise fees, its act may also constitute a concerted action by the same token, and it is likely to violate the Fair Trade Act.

For example, the board of directors of a county/ city trade union of land transaction personnel passed an amendment to the reference standards for the collection of fees on 13 items – with the price for each case or item being raised by NT$1,000 approximately, and a conversation fee item with a charge of NT$2,000 per hour being added – since the "Professional Practitioners' Revenue Standards Adjusted by the Tax Authorities" stipulated by the Ministry of Finance were higher than the standards set by the reference table of collection of each fee formulated by such a trade union, plus the recent inflation. On the basis of the fact that some members of each county's (city's) trade union of land transaction engaging personnel were already qualified as land administration agents and were the main providers of the land administration service market in each of the jurisdictions of the said market, these members were in a

situation in which they could compete horizontally among themselves and were to strive for opportunities to provide services through competitive prices or through the provision of a more positive service quality. If a trade union of land transaction engaging personnel jointly determined a reference table of collection for each fee by members through its board of directors, the acts were deemed to mutually restrict business activities and directly restrain price competition among the different personnel and were sufficient to affect the supply and demand functions of the market. The trade union thus violated Article 14(1) of the Fair Trade Act, which is concerned with the prohibition of concerted actions.

In order to maintain fair competition in the land administration service market, trade unions made up of land transaction personnel shall not persuade their members to implement joint increases in fees. When members of the general public buy houses and handle the registration of real estate transfers, they can compare different land administration personnel, and can inquire about and compare fees collected by such personnel with respect to the reasonableness of the amounts of these fees. If they find out that land administration personnel have raised fees simultaneously, this phenomenon may be the result of these practitioners engaging in a concerted action and the concerned public can complain to the FTC. As regards the situation where land administration personnel collect excessive fees, as the matter involves a dispute concerned with private rights, the concerned public will have to apply for relief by following judicial channels.

Keep Your Eyes Open for Completeness of Information Disclosed by Franchisers

Lin often bought drinks at a tea shop located in the neighborhood. As he found that the different flavors of tea were special and he also happened to have a certain amount of stock on hand, he suddenly had an idea to start a franchise business. After he discussed his thoughts with his family, he voluntarily inquired about the possibility of joining a franchise. After he negotiated with the person-in-charge of the franchise headquarters face-to-face, the person-in-charge indicated that his company happened to at the primary stage of opening up the franchise and that he could give Lin a discount. However, Lin found that the amount of funds needed to join the franchise was much more than he could imagine and he considered backing down. The person-in-charge indicated later on that he was willing to let Lin pay the franchise fee and the business reserve fund in installments. Lin felt he was being done a favor and agreed to sign the contract.

After the formal operations of the business commenced, Lin discovered that operating

a franchise business was not as easy as he had imagined; at this time, the franchise headquarters further added some regulations with which Lin was required to comply, causing Lin to discover that each party had a different way of looking at things. Subsequently, Lin's cooperation with the franchise company was terminated because the franchise headquarters alleged that Lin had violated the terms of the agreement, and the franchise fees previously paid would never be returned to Lin.

After these things took place, Lin thought that if the franchise headquarters had provided adequate and full information regarding the franchise before the conclusion of the contract, he might not have so easily ventured into the franchise business.

The findings of the FTC showed after investigation that, although the franchise headquarters did provide the agreement and related information prior to the franchise headquarters' conclusion of the agreement with the trading counterpart, the documents provided by it did not fully specify material trading information in writing in accordance with the "Fair Trade Commission Guidelines on the Disclosure of Information by Franchisers" – such material trading information included the date on which the enterprise began its franchising operations, the information on the relevant business experiences of the responsible person and the chief management personnel of the company, the intellectual property rights that the franchiser authorized the franchisee to use based on the time that the intellectual property rights were filed for review or granted as well as the content and the duration of the rights, and all the other names and business addresses of the franchisees and franchiser in the city or county in which the franchisee would be located.

The FTC believed that, even if the franchise headquarters did explain related information to the trading counterpart orally in the process of negotiating with him, it was indeed difficult for the trading counterpart, who was in an inferior position in terms of having the necessary information, to obtain adequate and full trading information through oral inquiries. Similarly, it would also have been difficult for him to adequately assess the market scale of the franchise headquarters, obtain details on the company's acquisition of intellectual property rights, and the growth of the trading counterpart's franchise business after the trading counterpart's joining of the franchise, or else pay on-site visits to existing franchise stores so as to check the correctness of such related information.

Such difficulties would have given rise to the risk that the trading counterpart would have a wrong perception of the franchise business and would consequently conclude a franchise agreement with the franchise headquarters. Therefore, the act of the franchise headquarters had already constituted an act that "was sufficient to affect trading order and was obviously unfair". The franchise headquarters therefore violated Article 24 of the Fair Trade Act. It was not only ordered to cease the aforesaid

unlawful act pursuant to the fore part of Article 41 of the Act, but an administrative fine of NT$ 50,000 was also imposed upon the franchiser.

Furthermore, the “Fair Trade Commission Guidelines on the Disclosure of Information by Franchisers,” had been promulgated in 1999, and several years had elapsed since the Guidelines had been amended in 2003. Since industry-operating patterns were continually being updated, the Guidelines were reviewed and further amended in 2008. In order to comply with the industrial practices at the time, the new amendments focused mainly on specifying different types of “payments of certain costs” in franchising and operating and non-application of retail modes that were easily confused with the term, “franchise”, such as dealings, commissioned sales, and consignment sales. This amendment would also help related enterprises with their compliance. In spite of what had be en mentioned, with respect to the information items that should be disclosed by enterprises and with a view to helping maintain trading order in the franchise market, the provisions regarding the enterprises’ public information which could be obtained by searching from public notices regarding the registration of the business had been deleted, and the provision which provides that all the other names and business addresses of the franchisees and the franchiser in the city, county (city) where the franchisee was to be located may be disclosed by an electronic document instead was added. In the same way, the legal effects of civil compensation liability were stipulated.

FTC Blocks Uni-President & Weilih Deal

A strong smell that assails the nostrils when one removes the lid of an instant bowl of noodles. This picture has already become a common impression regarding instant noodles to many people and instant noodles have already become convenient and good partners in people’s daily lives. The domestic instant noodles industry originated in 1967 when Japan introduced manufacturing technology to produce “instant fried noodles.” After developing instant noodles for more than 40 years, the domestic instant noodles industry is now headed towards a mature stage. In the same way, “Uni-President Ground-pork Noodles” introduced by Uni-President Enterprises Corp. and “Weilih Fried-sauce Noodles” produced by Weilih Food Industrial Co., Ltd. are both ranked among the “big four” instant noodles products; they not only help many people remember the time of their youth, but they continue to remain in great demand for their classic taste even now.

The annual output value of the domestic instant noodles industry has remained at approximately NT$8 billion in recent years, and the market shares of Uni-President Enterprises Corp. and Weilih Food Industrial Co., Ltd. in the domestic instant noodles

market are ranked first and second, respectively – they are each other's main competitors. Although the entry barriers in terms of required technology and capital in the instant noodles industry are not high purely in terms of the basic equipment required to produce instant noodles, the marketing of instant noodles must go with the available channels and the time and the amount of capital that are required to enter such channels will not make things easy for any new enterprise that intends to enter the market. In the same way, brand images that are established by domestic instant noodles enterprises over the long term have considerable effects on consumers' choice inclinations when consumers select and buy instant noodles; therefore, it is extremely difficult for enterprises to enter the instant noodles industry for the first time. Moreover, it has already appeared that the domestic instant noodles market has a tendency to be saturated. Therefore, for enterprises that want to newly enter this market, it is necessary for these enterprises to have sufficient average market demand to achieve economies of scale. Accordingly, it is unlikely that new enterprises are willing to enter this market.

The FTC believed that, in the case of this industry in the domestic instant noodles market, Uni- President Enterprises Corp. would hold nearly half of the total shares of Weilih Food Industrial Co., Ltd. As a result the competitive force between Uni-President Enterprises Corp. and Weilih Food Industrial Co., Ltd. could be weakened after the merger of these two companies, and thus the competitive pressure between these two companies would be reduced. In the same way, as existing enterprises were unable to generate sufficient competitive pressure against these two companies after the merger of such companies, the original anxieties regarding raising the sales prices of products would be lessened. In other words, these two companies' abilities to unilaterally raise the prices of instant noodles products would be largely increased. Furthermore, downstream conventional retail channels such as grocery stores and consumers had absolutely no power to effectively counterbalance the activities of these enterprises. In addition, with respect to the fact that the total market share of the two companies in the instant noodles market reached as high as 70%, if the two companies engaged in acts that were similar to acts that restrain competition and are performed by enterprises which are in monopolistic or oligopolistic positions in the market, the market function would be severely impaired and the resulting damage would be unable to be rectified.

On the other hand, although Uni-President Enterprises Corp. and Weilih Food Industrial Co., Ltd. indicated at the time of filing a merger report with the FTC that the purpose of their merger was mainly to mutually exchange experiences and expand overseas markets, that their merger could increase the overall competitiveness of the nation and enhance consumers' interests, and that Uni-President Enterprises Corp.

would not intervene in the business operations of Weilih Food Industrial Co., Ltd., the FTC believed that it would be very difficult for such a merger to give rise to obvious benefits of economies of scale. The FTC found that Uni-President Enterprises Corp. and Weilih Food Industrial Co., Ltd. could proceed by exchanging experiences on purchases, research and development, and production based on their existing status, and that the facilitation of such exchanges did not need to be based on further acquiring nearly half of the shares of Weilih Food Industrial Co., Ltd. The FTC further found that expanding overseas markets could also proceed without first eliminating domestic competition; besides, it would also be difficult, through this merger, to ensure the fulfillment of circumstances such as increasing the overall competitiveness of the nation and facilitating consumers' interests, which were named in the merger report.

At the same time, the FTC believed that, if any of the enterprises participating in the merger was a failing enterprise and that such an enterprise would withdraw from the market without engaging in a merger, then adopting the merger approach could have been regarded as being beneficial to the overall economic benefit. Nevertheless, these two companies were neither failing enterprises, and they had no urgent need to speedily raise funds to ensure their survival through the merger, and there were no signs indicating that without this merger, there would be a situation where enterprises would withdraw from the instant noodles market. In summing up the above analysis, the FTC believed that this merger would cause very conspicuous disadvantages to result from the restraints on competition, and the overall economic benefit of the merger would not be obvious. The merger was therefore prohibited.

FTC Targets Debt Clearance Untrue AD

Consumption and finance are well developed in modern societies. Following the expansion of consumer credit, it is inevitable that one occasionally finds that consumers are saddled with multiple debts and are unable to pay them off. In order to look after the interests of both creditors and debtors in such situations, and to enable consumers in financial difficulty to clear up their debts, the Consumer Debt Clearance Act (hereinafter referred to as the "Debt Clearance Act") came into force on April 11, 2008.

X company published in a newspaper the advertisement for the service: "Frequently Asked Questions about Restructuring," and the advertisement claimed in response to certain specific questions:

Q11: How much do I pay for restructuring?

A: 20% of the debt.

Q70: In what circumstances can the conditions of a restructuring scheme proposed by the debtor be recognized as fair and equitable?
A: For instance, a restructuring scheme in which 20% of the total debt outstanding is paid off is proposed.
In the same way, the advertisement on the website and in the related advertising leaflets also claimed that: “1. Table of the Number of Periods for suggested debt repayment at the rate of 20% for the purpose of debt restructuring. 2. Debt Negotiations - Propose a restructuring scheme at the rate of approximately 20% of the total debt with banks. … 5. If you repay 20% of the total debt in installments, you can apply for a disclaimer of liability.” These contents looked attractive, but in fact, they did not fully comply with the Debt Clearance Act.
In accordance with the Judicial Yuan’s Q&A related to the Debt Clearance Act, the content of the Q&A section pointed out the following. As to whether a restructuring scheme can be recognized by a court shall depend on the nature or content of the scheme, “whether or not the scheme can be adopted at the meeting of creditors,” and on “whether the content of the scheme is fair and equitable.” Pursuant to the relevant provisions of the Debt Clearance Act, the conclusion that “ you only repay an amount that is 20% of the debt” could not be derived. Where the ruling provides that a disclaimer of liability is not granted to a debtor after the termination of clearance procedures, provided that the debtor continues to pay off debts pursuant to Article 142 of the Debt Clearance Act, and each ordinary creditor is paid 20% or more of the amounts of his debts, and as a result of these acts, the debtor applies to the court for a ruling granting disclaimer of liability, the court shall still consider the particulars of circumstances that prevent it from granting a disclaimer of liability to the debtor, circumstances in which the creditors were paid and all other situations, and then approve or reject the application. As a matter of fact, the court does not always grant a disclaimer of liability to debtors. The wording that you only pay off 20%, and that you are exempt from paying off the rest of the debts, and which are claimed by most street stalls, are widely reported or speculated. However, these stalls indeed misunderstand the legislative intention of the Debt Clearance Act concerning the application for a disclaimer of liability.
If the claims of an advertisement made by an enterprise to solicit its services to handle debt restructuring upon being commissioned by the authorities involved amounts to be repaid as part of a restructuring scheme, the enterprise shall be responsible for verifying related content and conditions to the utmost extent to ensure the authenticity of the representations of its advertisements. This will allow consumers to assess each of these conditions accordingly prior to making transaction decisions. If an advertisement fails to illustrate of the restrictions that relate to the procedures of debt

restructuring and complementary measures on checking bad credit, such a failure will prevent consumers from obtaining correct information, causing them to have erroneous perceptions and to make wrong decisions as regards the contents of the debt restructuring service provided by the enterprise. Hence, the claims presented in the relevant advertisements of the above-mentioned X company have violated Article 21 of the Fair Trade Act. A debtor who handles debt restructuring should never be misled by exaggerated and untrue claims presented by an agency institution to avoid suffering a double loss instead of making a gain.

Statistics on FTC Self-initiated Investigation Cases

When one refers to the "Statistical Yearbook of the Fair Trade Commission" published by the FTC each year, one is certain of discovering that cases of the FTC can be generally classified into two types. The first type involves the term "cases received" (which consist of complaints, merger notifications, applications for concerted action, and requests for explanation received by the FTC), and the other type consists of the term, "FTC self initiated investigation cases". The definition and the methods of compilation of the second type of FTC cases are now introduced as follows:

(1) Definition

In accordance with the “"Fair Trade Statistics Classification and Definitions" stipulated by the FTC, the term, "FTC self-initiated investigation cases," means that in spite of the fact that the FTC receives cases, the FTC takes the initiative to investigate, in accordance with its authorization and duties, possible illegal actions against the Fair Trade Act in accordance with certain established procedures. The term encompasses the situation where the FTC takes the initiative to open a case and investigate, cases where commissioners conduct oral interrogations, complaints filed by anonymous persons, and other complaints, in which the names of the complainants do not appear in the documents and are transferred from other authorities. Nevertheless, the findings of FTC self-initiated investigations can be divided on the basis of the terms "Decision," "No-action Decision," "Administrative Action," ”Termination of Review," and "Others." For detailed definitions, please refer to the FTC's website (http://www.ftc.gov.tw/) by clicking on captions, Statistics / Major Statistical Terminologies and Their Definitions / FTC Self-initiated Investigation Cases.

(2)Methods of Compilation

As the characteristics of cases vary, in principle, the computation of the number of cases and of special cases with respect to the statistics for FTC self-initiated

investigation cases is adopted.

Furthermore, to facilitate the matching of statistics on decisions regarding illegal acts against the Fair Trade Act – where such decisions are enforced by the FTC – if the findings regarding special cases (cases) are decisions, and at the same time the public files complaints, or other authorities transfer cases to the FTC, and the facts of these complaints or cases are identical to the facts of the said special cases (cases), then these complaints or cases are categorized as others. Manpower that is invested in FTC self-initiated investigation cases is categorized as others, and the number of public hearings or workshops held, as well as the number of enterprises being investigated are not included in the statistics. On the other hand, the number of cases where continuous punishments are imposed on enterprises, which do not make corrections pursuant to dispositions, is to be included in the statistics.

(3) The FTC' s Achievements in Executing Its Self –initiated Investigation Cases

1. Number of Cases: In 2008, 97 of the FTC's self initiated investigation cases were opened, and at the end of 2008, a grand total of 1,254 cases of such a type were opened. Amongst these 1,254 cases, 1,160 cases were processed and closed, with the ratio of cases closed reaching 92.5%.

2. Resources Invested for Investigations: 115 of the FTC's self-initiated investigation cases were closed in 2008, while the number of person-times invested as manpower was 1,155 (including undertaking commissioners, co-organizing commissioners, proof-reading commissioners and judging commissioners).

In addition, a total of 3 public hearings or workshops were held, while the number of enterprises being investigated reached 1,224. As of the end of 2008, a grand total of 1,160 of the FTC's self-initiated investigation cases was reached. The number of person-times invested as manpower was 9,720, there were 169 public hearings or workshops held, and the number of enterprises being investigated amounted to 5,502.

3. Results of Investigations: Of the 115 of the FTC's self-initiated investigation cases that were closed in 2008, 61 decisions against illegal acts were made (53.04% of the total number of the FTC's self-initiated investigation cases were closed in 2008, 68 dispositions were mailed, and 93 enterprises were punished). A total of 27 no-action decisions were made, while 1 administrative action was made, and reviews of 21 cases were terminated. At the end of 2008, a grand total of 1,160 of the FTC's self-initiated investigation cases was reached, 496 decisions were made (42.76% of the total number of the FTC's self-initiated investigation cases being closed by the end of 2008, 614 dispositions were mailed, and 811 enterprises were punished).

4. As of the end of 2008, a grand total of 614 dispositions were analyzed pursuant to the texts of provisions violated (in principle, acts that violated two or more provisions

were calculated repetitively at the same time) – the number of cases regarding false, untrue, and misleading advertisements and hence violations of Article 21 were ranked first, and amounted to 166 cases (27.04% of the said 614 dispositions); the number of cases where acts of deception or acts that were obviously unfair violated Article 24 ranked second and amounted to 148 cases (24.1% of the aforesaid number of dispositions); and the number of cases concerning violations of the Supervisory Regulations Governing Multi-level Sales provided by Article 23-4 ranked thi rd and amounted to 127 cases (20.68% of the aforesaid number of dispositions).

5. At the end of 2008, a grand total of 33 decisions regarding the FTC's Self-initiated Investigation Cases were withdrawn or partially withdrawn after petitions or administrative litigation proceeded were reached. After an analysis of these decisions pursuant to the texts of the provisions violated, it was shown that the number of cases where acts of deception or acts that were obviously unfair amounted to 8 cases (24.24% of the said 33 decisions) and it ranked first. Secondly, the number of cases concerning with concerted actions as set forth in Article 14 was 7 cases (21.21% of the aforesaid number of decisions) and was ranked second, and lastly, the number of cases concerned with false, untrue, and misleading advertisements regulated by Article 21 and the number of cases with respect to Article 41 amounted to 6 (or 18.18% of the aforesaid number of 33 decisions) and they were ranked third.

Statistics on the FTC's Self-initiated Investigation Cases

Year	Established Cases	Closed Cases	Findings of Investigations						
			Cases subject to Decision		No-action Decision	Administrative Action	Investigation Terminate	Others
			Initiated Cases	Decision Statements				
Total	1,254	1,160	496	614	284	91	226	63
1992	10	4	3	13	-	1	-	-
1993	28	18	11	14	1	5	1	-
1994	40	37	19	39	10	3	5	-
1995	35	36	21	21	2	8	5	-
1996	21	27	16	27	1	4	6	-
1997	26	31	22	27	2	2	5	-
1998	38	34	28	28	1	3	2	-
1999	30	27	14	16	5	-	8	-
2000	38	36	18	24	7	3	8	-
2001	37	30	19	20	8	2	1	-
2002	41	42	29	29	5	6	2	-
2003	95	76	33	64	9	8	26	-
2004	101	84	34	34	16	8	26	-
2005	143	128	44	44	27	10	41	6
2006	301	259	58	74	131	4	35	31
2007	173	176	66	72	32	23	34	21
2008	97	115	61	68	27	1	21	5

FTC Activities in January 2009

■ On January 6, the FTC invited Consultant HUANG Kuo-Chung of the National Policy Foundation to present a speech entitled "The Gaming Industry and Government Control."

■ On January 13, the FTC organized a speech entitled "Analysis of the Market Structure of TFT-LCDs and Competition Acts," which was presented by Chief Executive Officer HAO Chin-Ming of the Color Imaging Industry Promotion Office of the Industrial Development Bureau, Ministry of Economic Affairs upon the invitation of the FTC.

FTC International Exchanges in January 2009

■ On January 12, the FTC took part in the conference call held by the International Competition Network. The theme of the conference call was "Competition Advocacy in an Economic Downturn."

■ On January 15, Section Chief CHEN Chun- Ting, Inspector TU Hsing-Feng, Inspector LIU Shaw-Chen, and Inspector YEN Chia-Lin of the Department of Planning of the FTC took part in two conference calls, one was preparations for "ICN Merger workshop," and the other was ICN MWG.

■ On January 15, Section Chief CHEN Chun-Ting, Inspector TU Hsing-Feng, Inspector LIU Shaw-Chen, and Inspector YEN Chia-Lin of the Department of Planning of the FTC took part in the conference call held by the Task-Force of technical assistance on competition policy in East Asia Activity.