

Fair Trade Commission

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Extending the Concerted Action Approval for the Common Schedule of the “Donggang-Xiao Liuqiu Line”

During its 920th Commissioners’ Meeting on June 25, 2009, the FTC resolved the case where Zhongyi Cruise, etc. (hereinafter referred to the applicant, Zhongyi Cruise) applied for an extension regarding concerted actions on the “Donggang-Xiao Liuqiu Line,” including a common schedule, ticket sales, and a single ticket. The Commission approved the extension until July 1, 2012 pursuant to the Article 14(1) proviso (i) and Article 15(2) of the Fair Trade Act.

The FTC indicated that, since there is neither an airport on Xiaoliuqiu nor a road directly connecting it with the island, Xiaoliuqiu Island totally relies on commuting ships for external transportation. After the applicant had applied for a concerted action in regard to a common schedule, ticket sales and a single ticket, consumers could freely choose the schedule and shipping company using a single ticket. There were also commuting ships available during peak or off-peak hours, thus benefiting consumers; in addition, the passenger-load rate for commuting ships was to be boosted, 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 competition. On the other hand, this concerted action can lower managerial,



personnel and transportation costs and port fees, effectively utilize facilities, and promote the economy and tourism on Liuqiu Island. In sum, it will benefit the overall economy and public welfare.

The FTC pointed out that the transportation authority also said that this concerted action created a routine schedule during off-peak hours and helped allocate and

manage pier spaces. It also lowered the operating costs for the businesses concerned. From the consumers’ perspective, there were more route choices. These all had positive impacts on the transportation. Thus, the transportation authority also approved this application.

The FTC indicated that extending the concerted actions on the “Donggang-Xiao Liuqiu Line,” including the common schedule, ticket sales, and a single ticket, would benefit the overall economy and enhance public welfare. It qualified the proviso of Article 14(1) (i) and Article 15(2) of the Fair Trade Act, and thus the approval was extended to July 1, 2012. However, to avoid the disadvantages of unfair or restricted competition, and to advance the overall economy and public welfare from this concerted action, a burden was imposed pursuant to Article 15(1) of the Fair Trade Act.

Merger between Panasonic Company (Japan) and Sanyo Electric Co., Ltd. (Japan) --Not Prohibited

During its 921st Commissioners’ Meeting on July 1, 2009, the FTC resolved the case regarding the merger between Panasonic Company of Japan (hereinafter called Panasonic) and SANYO Electric Co., Ltd. of Japan (hereinafter called Sanyo). Pursuant to Article 12(1) of the Fair Trade Act, the merger was not prohibited.

The FTC pointed out that Panasonic intended to tender offer 100% of the issued shares of Sanyo. If it succeeds, then Sanyo will be a subsidiary that is 100% controlled by Panasonic. At present, Panasonic expects to acquire at least 51% of Sanyo’s issued shares through tender offer. Thus, the said merger is deemed to take place according to Article 6(1)(ii) of the Fair

Trade Act “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” and Article 6(1)(v) “where an enterprise directly or indirectly controls the business operation or the



appointment or discharge of personnel of another enterprise” of the same Act. After the merger, Panasonic’s and Sanyo’s combined annual sales in the previous fiscal year will have reached the threshold for a merger report, and since the exemption under Article 11-1 of the Fair Trade Act does not apply, the merger shall be reported to the FTC pursuant to Article 11(1)(iii).

The FTC indicated that, if Panasonic and Sanyo were to merge, the overlapping products would include electronic parts like chargeable batteries, air conditioner compressors, SAW filters, and sensors, etc. as well as home appliances such as washing machines, refrigerators, TVs, and air conditioners. The merger would have only caused a slight change in the market shares of some products; as for products that had a higher combined market share after the merger, such as washing machines, refrigerators and other home appliances, they were mostly mature products with high coverage rates, and there were many domestic and imported brands, so that competition depended mainly on price and quality. On the other hand, after reviewing the probability that other competitors would select their trading counterparts after the merger, the degree of difficulty faced by an enterprise not participating in the merger in entering the relevant market, and the possibility that merging parties would abuse their market power in the relevant market, the FTC concluded that the merger between Panasonic and Sanyo would not cause substantial damage to market competition; the overall economic benefits outweighed the disadvantages of competition restraints. Thus, the merger was not prohibited pursuant to Article 12 of the Fair Trade Act.

FTC Policy Statements on the Distribution of Elementary School Textbooks

After collecting opinions on the sales of elementary and junior high school textbooks, the FTC amended parts of the “Fair Trade Commission Policy Statements on the Distribution of Elementary School Textbooks” on June 29, 2009. The major amendments were the follows:

1. Article 24 of the Fair Trade Act shall apply to all inappropriate gifts for textbook sales, regardless of whether the receiver is a user (student), selector (teacher), or other interested party. The original Guideline differentiated between a user and a selector when the receipt of textbooks as gifts was involved. It was for these that Article 19(iii) or Article 24 of the Fair Trade Act applied, respectively. This may have led to some unbalanced or unjustifiable results; for it is not the same person who chooses and pays for the textbook, and it is therefore hard to deem if any of them is a trading counterpart as referred to in Article 19(iii) of the Fair Trade Act. In addition, the original scheme may have confused textbook sellers and made the process of legal compliance more complicated. Thus, the FTC decided not to distinguish the gift receiver in the case of textbook sales and applied Article 24 to all situations.

2. The items received by teachers from textbook publishers shall be limited to those necessary to teaching: the original Guideline used “whether it is not directly related to a specific textbook” to determine if gifts from a publisher were “inappropriate.” Such wording is unspecific and leaves a gray area in terms of its legal application. As a result, publishers often claim that all items mentioned in the textbook (no matter how remote they are) have a direct relationship with the textbook, and it is also hard for schools and teachers to judge whether to accept such gifts in practice. On the other hand, many schools have alleged that publishers sent them more gifts than needed; the duplicate gifts are not only a waste, but also require the school to allocate more personnel and storage space.

In addition, once it becomes common practice to offer teaching material and relevant items for free, the publishers’ operating costs increase dramatically. Thus, the FTC concluded that items given by textbook publishers to teachers shall be limited to those necessary to teaching. The wording “necessary to teaching” is thus added in the Statement to make it more specific.

3. The Statement also specified that the “foretelling” of inappropriate money, items or other economic benefits shall also be regulated. In the past, only after a gift “had been sent ” would the publisher’s action be deemed illegal, and “foretelling” the provision of a gift which had not been offered yet or was only fully fulfilled later would not be illegal. However, the FTC was of the opinion that regardless of whether the items were provided or not, as long as textbook

publishers spoke of providing or offering gifts during the decision period, the chooser's decision-making and final judgment may have been affected. Thus, the amendment indicates that the violation does not depend on whether items are actually sent, and even referring in advance to inappropriate money, items or other economic benefits shall be deemed illegal under the Statement.



Statistics for Concerted Actions

I. Definition of Concerted Action

Pursuant to Article 7 of the Fair Trade Act, the term “concerted action” refers to the conduct of any enterprise, by means of a contract, agreement or any other form of mutual understanding (which means, other than a contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions), 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 restrict each other’s business activities.

The term “concerted action” as mentioned above is limited to horizontal concerted actions at the same production and/or marketing stage which would affect the market function of production, trade in goods, or supply and demand for services; in addition, 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 to be a horizontal concerted action.

II. Prohibition and Exemption of Concerted Actions

Pursuant to Article 14 of the Fair Trade Act, 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 to 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 party to the action developing a separate and specialized area for the purpose of rationalizing operations;
- (4) entering into agreements concerned solely with the competition in foreign markets for the purpose of securing or promoting exports;
- (5) joint acts in regard 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 demand in an orderly manner, while in an economic downturn the market price of the products is lower than the average production costs so that the enterprises in a particular industry have difficulty maintaining their business or encountering a situation of overproduction; or
- (7) joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium-sized enterprises.

After receipt of the application referred to in the preceding paragraph, the central competent authority shall make a decision to approve or reject the application within a period of three months, with this period being able to be extended once if necessary.

III. Statistics for Concerted Actions

(1) Applications for Concerted Actions

The FTC concluded that, until the end of July 2009, it had received 156 applications for concerted actions; a total of 155 cases were closed, with 114 approved (73.5% of cases closed), 11 partial approvals, 10 overruled (6.5% of cases closed), and 20 reviews terminated. Between January and July 2009, 4 applications for concerted actions were approved, of which one involved unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency (which was in accordance with Article 14(1)(i) of the Fair Trade Act) and 3 were joint acts in regard to the importation of foreign goods for the purpose of strengthening trade (which was in accordance with Article 14(1) (v) of the Fair Trade Act).

As of the end of July 2009, 12 concerted actions approved by the FTC were still effective; they were divided into the following categories:

1. Eight concerted actions for the joint importation of wheat, barley, soy bean, corn, and other bulk

commodities; participants were mostly in the food-processing business.

2. One approval for the joint-shipment of imported materials and facilities for government and state owned enterprises
3. One application for the extension of a credit card concerted action.
4. One concerted action for the joint cruise scheduling, ticket sales and single ticket for the Donggang-Xiaoliuqi Line.
5. One concerted action for a standardized Digital TV Set-top-box technique.

(2) Decisions on Concerted Actions

As of the end of July 2009, the FTC ruled 145 decisions on concerted actions, which constituted about 4.7% of the total decisions. From January to July 2009, there were 6 decisions for concerted actions in the rental and leasing, retail trade, wholesale trade, human health service, architecture and engineering service & technical testing and analysis service. For other statistics on concerted actions, please visit the FTC’s website “Statistics/ Cases Received.”

Table 1 Applications for Concerted Actions

Unit: Case

| Year & Month | Applications Received | Cases Closed | | | | |
|-------------------|-----------------------|--------------|----------|-----------|--------------------|-------------------|
| | | | Approved | Overruled | Partially Approved | Review Terminated |
| Total | 156 | 155 | 114 | 10 | 11 | 20 |
| 1992-2001 | 105 | 103 | 68 | 10 | 9 | 16 |
| 2002 | 8 | 8 | 6 | - | - | 2 |
| 2003 | 12 | 14 | 12 | - | 2 | - |
| 2004 | 2 | 1 | 1 | - | - | - |
| 2005 | 7 | 6 | 5 | - | - | 1 |
| 2006 | 9 | 10 | 9 | - | - | 1 |
| 2007 | 3 | 4 | 4 | - | - | - |
| 2008 | 6 | 5 | 5 | - | - | - |
| Jan. – July, 2009 | 4 | 4 | 4 | - | - | - |

Table 2 Concerted Actions Approved & Still Effective
Up to the end of July 2009

| Items Applied for | Effective Period | Enterprises (No.) | Applicable Fair Trade Act |
|---|--|-------------------|---|
| 1. To extend the joint procurement and shipment of imported barley | January 1, 2000 to December 31, 2011 | 7 | Article 14(1)(v) Article 15(2) |
| 2. To extend the joint shipment of imported corn (the feed association) | March 1, 2009 to February 28, 2012 | 37 | Article 14(1)(v) Article 15(2) |
| 3. To extend the joint procurement and shipment of imported soy bean | August 30, 2000 to August 31, 2009 | 20 | Article 14(1)(v) Article 15(2) |
| 4. To extend the joint procurement and shipment of imported wheat | October 1, 2006 to September 30, 2009 | 41 | Article 14(1)(v) Article 15(2) |
| 5. To extend the concerted action in credit issuance | January 1, 2007 to December 31, 2009 | 29 | Article 14(1)(i) |
| 6. To extend the joint shipment of corn (Dacheng Changcheng Div.) | June 1, 2009 to May 31, 2012 | 6 | Article 14(1)(v) |
| 7. To extend the joint-shipment of imported materials and facilities for government and state-owned enterprises | September 26, 2008 to September 28, 2011 | 12 | Proviso of Article 14(1) |
| 8. To extend the joint cruise scheduling, ticket sales and single ticket of the Donggang-Xiaoliuqiu Line | July 2, 2009 to July 1, 2012 | 5 | Proviso of Article 14(1) Article 15(2) |
| 9. To apply for the joint- shipment of imported com | January 26, 2007 to January 25, 2010 | 20 | Article 14(1)(v) |
| 10. The joint procurement and shipment of wheat | September 10, 2007 to September 9, 2010 | 25 | Article 14(1)(v) |
| 11. The joint procurement and shipment of soy bean | March 13, 2008 to March 12, 2012 | 5 | Article 14(1)(v) |
| 12. To apply for the standardized Digital TV Set-top-box technique | July 25, 2008 to July 25, 2011 | 28 | Proviso of Article 14(1)(i) |

FTC Activities in August 2009

- On August 3 and 4, the FTC held the “2009 Southern Region Multi-level Sales Regulation Camp for College Faculty and Students” in Kaohsiung City
- On August 4 and 11, the FTC held the “Introduction to Competition Restraints in the Technology Industry” in Taichung City and Kaohsiung City
- On August 6 , the FTC held the “FTC Introduction to Regulations for Elementary and Junior High School Textbook Sales” in Kaohsiung City.
- On August 21, the FTC held the “Introduction to FTC Regulations on TV Ratings”.
- On August 25, the FTC invited Assistant Professor, Li-dar Wang, of the NCTU Law Department

to lecture on “Regulations for Patent Licensing: Licensing Types and the US Perspective”

■ On August 28, the FTC held the “FTC Introduction to Infant Formula milk powder Sales and the Fair Trade Act” in Taipei City.

■ On August 28, the FTC hosted the Fair Trade Act Camp for Colleges in the Southern Region in the Mass Communications Department of the Open University of Kaohsiung.

■ On August 17, 18 and 19 The FTC held “The 5th APEC Training Course on Competition Policy” at the Grand Formosa Regent Taipei.



1. The FTC held the “2009 Southern Region Multi-level Sales Regulation Camp for College Faculty and Students” in Kaohsiung.
2. The FTC held the “Introduction to Competition Restraints in the Technology Industry” in Taichung.
3. The FTC held the “Introduction to FTC Regulations on TV Ratings” in Taipei.
4. The FTC held “The 5th APEC Training Course on Competition Policy” at the Grand Formosa Regent Taipei.