

# Fair Trade Commission

## 【FTC Newsletter】

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### Investigation into Prices of Necessities after Typhoon Morakot

On August 8, 2009, Typhoon Morakot hit southern Taiwan badly and seriously damaged its agriculture. As a member of the Cabinet, the FTC assumed full responsibility in coordination and price stabilization. The prices of agricultural products are not controlled by the government, but are rather determined through the market mechanism. When there is a natural disaster such as a typhoon, supply will decrease and prices will



go up. This is an unavoidable process of market operation. The objective of the Fair Trade Act is to guarantee regular market operation but not replace the market. However, abnormal price fluctuations may also arise because of monopolies, concerted actions, or other violations of the Fair Trade Act, and it is therefore important to investigate the situation. As a result, the FTC initiated investigations

into the changes in the prices of agricultural products and necessities following Typhoon Morakot. The FTC, in examining the causes of the price changes, sought to determine whether enterprises raised prices in concert, restricted production output, or engaged in other concerted actions. If any monopolistic behavior or concerted action is found, the FTC will punish the enterprise according to the law. The FTC wishes to discourage concerted actions and stabilize the price level through continuous investigations and enforcement of the Fair Trade Act.

The FTC adopted the following measures and investigations both before and after Typhoon Morakot:

1. To continue the operations of the “taskforce against price manipulation”: The “taskforce against price manipulation” held its 47th, 48<sup>th</sup> and 49th meetings on August 17, August 25 and September 25. In the meetings, it analyzed price conditions for major agricultural products, rescue equipment, materials for reconstruction, and processed food, etc. after Typhoon Morakot. In addition, future investigations, targets, and resource allocation were also discussed in the meetings.
2. To initiate investigations on relevant enterprises and associations: The FTC initiated investigations on whether the price rises for agricultural products were caused by concerted actions or by other violations of the Fair Trade Act. The FTC inspected the wholesale and traditional markets to gather information on price changes. In order to collect such information on the price changes of agriculture products following Typhoon Morakot, the FTC sent representatives to wholesale, traditional markets and retail channels in northern, central, and southern Taiwan. Up to September 9, 2009, the FTC investigated a total of 291 wholesale and traditional markets, dispatching more than 500 person-times for investigations.
3. To announce the availability of a complaint hotline for the general public: In order to collect information related to potential monopolies and concerted actions, the FTC announced the setting up of a complaint hotline on August 12, 2009 to gather information from the public. We received 16 complaints and designated staff to work on the cases.
4. To warn relevant enterprises and show the FTC’s determination in law enforcement: On August 13 and 17, 2009, the FTC issued warnings to the Meat Trade Associations of various counties and cities and importers of fresh fruits and vegetables, telling them not to raise prices in concert or violate the Fair Trade Act. Any violations would be scrutinized and punished.
5. To request that relevant authorities report legal violations: On August 13, 2009, the FTC requested that the Council of Agriculture of the Cabinet, the Consumer Protection Commission of the Cabinet, the National Police Agency of the Ministry of Interior, municipalities, and the county (city) governments inform the FTC regarding any evidence or information on concerted price increases. In addition, on August 17, the FTC requested that the municipalities and county (city) governments see that market managers within their respective jurisdictions report any concerted actions by venders.

6. To coordinate with agricultural authorities in the regulation of monopolies and concerted actions: On August 27, 2009, the FTC visited the Council of Agriculture of the Cabinet regarding the price trends of agricultural products and price stabilization measures; the parties also agreed to investigate concerted actions by intermediaries on agricultural products together.



7. To timely issue newsletters and reduce public expectations: After Typhoon Morakot struck Taiwan, the FTC issued newsletters on August 10, 2009, warning enterprises not to engage in any concerted actions or price manipulation. On August 12, the FTC announced the setting up of its complaint hotline. On August 14, 19, 21 and 22, the FTC issued newsletters regarding the results of its investigation. On the one hand, the FTC wished to call attention to compliance with the Fair Trade Act and relevant regulations; on the other hand, the FTC wanted to stabilize consumer confidence and avoid unnecessary expectations.

Typhoon Morakot resulted in a loss to agriculture amounting to NT\$ 4,998.2 million; volumes of flowers and fruits were reduced by 60% and of short-term leafy vegetables by 50%. The overall vegetable supply was reduced by 37.2%. Based on past experiences, wholesale prices normally reach a peak 2 to 3 weeks after the typhoon. After Typhoon Morakot, the average wholesale price for vegetables reached a peak of NT\$ 35/kg on August 18. In mid-September, the price level returned to NT\$ 25/kg or less. The price level in early October was NT\$ 23.1/kg. The price rises following the typhoon also increased consumers' living expenses. Housewives made the following complaints: "Why isn't it illegal for vendors to raise the prices of vegetables and fruit?" and "Why doesn't the government directly control vegetable prices?" However, as mentioned in a report by a US Federal Trade Commission official after Hurricane Katrina, "no good policies can avoid price rises after natural disasters; however, a bad policy will extend the price increase for a longer time." While increases in the prices of fresh fruits and vegetables do increase consumers' expenses, they are an unavoidable result of natural disasters. From another perspective, since typhoons lead to increases in the prices of vegetables, under the price mechanism, the demand for vegetables will be moderately reduced, farmers will have the incentive to plant more, and importers will import more vegetables into the domestic market. The three forces together will lead the market to equilibrium at a faster speed. On the contrary, any interference with prices will create an unchangeable supply gap, causing the imbalance between demand and supply to linger for a longer period.

The objective of the Fair Trade Act is to maintain a robust market mechanism free from manipulations and to guarantee a free and fair market based on competition. Under a free market, an

individual enterprise's pricing strategy will be tested by the market and will be restricted by competition. Arbitrarily high prices will be eliminated by the market. If the price is a product of market demand and supply, then the Fair Trade Act need not interfere with the price level or adjustments. In other words, the market mechanism will automatically correct the discretionary price increase by itself. The mission of the Fair Trade Act is, through sustaining competition, to let the market correct itself. Prices set by individual enterprises will not be regulated by the Fair Trade Act if there is no excessive pricing by a monopoly, or if there are no agreements, contracts, or other restrictions on price or output between horizontal competitors. There are many participants in the demand and supply of agriculture products. The market structure is dispersed and hard to subject to manipulations. The FTC's function is not to directly interfere with prices; rather, the FTC shall maintain regular market operations. Of course, abnormal price fluctuations may be the results of concerted price rises or other violations to the Fair Trade Act, which await further investigation. However, concerted actions have strict criteria, and concerted price rises of themselves do not constitute concerted actions. The FTC will perform a complete investigation before making a decision. The FTC also wishes to discourage any potential violations of the Fair Trade Act and to stabilize prices through investigations and law enforcement. If specific evidence of violations of the Fair Trade Act is discovered, an administrative fine ranging from NT\$ 50,000 to NT\$ 25 million will be imposed on the enterprise.

## FTC Calls Attention to Tobacco Companies and Distributors



“The Tobacco Hazards Prevention Act” became effective on January 11, 2009. On the next day (12), the Legislators passed some amendments to “The Tobacco Hazards Prevention Act.” The Health and Welfare Surcharge on tobacco products was raised from NT\$10 to NT\$20. In addition, on April 10, 2009,

the Department of Health of the Cabinet raised the Health and Welfare Surcharge on tobacco products to NT\$20 starting June 1, 2009.

To avoid the hoarding of tobacco products and for easy identification, anti-counterfeiting labels were attached to tobacco products to distinguish those with NT\$10 and NT\$20 Health and Welfare Surcharges. However, on June 1, when consumers purchased tobacco products at convenience stores, the price was NT\$5 more. Consumers were confused as to whether it was a price rise on tobacco products, or the new Health and Welfare Surcharges. The FTC initiated an ex officio investigation into whether the tobacco companies and distributors had violated the Fair Trade Act in regard to the prohibition on concerted actions.

After investigating the Taiwan Tobacco & Liquor Corporation (hereinafter referred to as TTL), the JT Tobacco International Taiwan Corporation (hereinafter referred to as JTI), and Philip Morris Taiwan SA Taiwan Branch (hereinafter referred to as PMTW), the FTC discovered the following. There were about 140 tobacco products available in the market, and 70 of them were subject to the price increase. The major tobacco companies in the upper-stream are TTL and JTI, and they have market shares of about 30% and 40%, respectively.

TTL and JTI compete mostly in middle- and low-priced tobacco products, while JTI and PMTW compete mainly in high-end products. The primary brands in the market include TTL’s Long Life, JTI’s Mild Seven, and PMTW’s Marlboro; besides, there are dozens of brands available in the market. There is also competition within brands. Other than price, factors such as brand loyalty and the taste of the cigarette also affect the consumers’ choice. In addition, the FTC found that the three tobacco companies had different considerations for price adjustments. They also notified distributors in the lower-stream regarding price changes at a different time.

Even though the three tobacco companies all adjusted the prices of tobacco products at NT\$5 intervals, not all product prices increased by NT\$5; some increased by NT\$10. The three tobacco

companies differed in the extent of the price adjustments. Based on previous practice and for the convenience, odd amounts are rare in price adjustments on tobacco products. In particular, manufacturers offer different discounts and wholesale prices to distributors in the lower stream. On the other hand, the FTC's economic analysis showed that, after knowing of JTI's price increase, it was rational for TTC to raise product prices as well; TTC would increase the price even when the two companies had no agreements. In addition, the analysis of the market impacts could not exclude the possibility that price adjustments were based on independent and rational actions by the three companies. Based on current evidence, it was hard to conclude that the three companies violated the Fair Trade Act regarding prohibitions on concerted actions. However, the FTC discovered that the three companies each provided a table of reference retail prices to distributors in the lower stream. This may have constituted a fixed resale price. Therefore the FTC focused attention on the three tobacco companies for possible legal violations.

The increase in retail prices directly affects consumer rights. On June 1, when consumers purchased tobacco products at three major convenience store chains, they discovered a NT\$5 increase in tobacco product prices, which may seem to be a concerted action in terms of price adjustments. The FTC further investigated whether the three major distributors, President Chain Store, Taiwan FamilyMart Co., Ltd., and Hi-Life International Co., Ltd., were involved in a concerted price rise. The FTC discovered that the three major distributors received the tobacco companies' notices of an increase in the wholesale prices of tobacco products at different times. Based on past experience and customs, distributors in the lower-stream often adjust prices based on suppliers' notices in order to reflect increased costs in the end price, when manufacturers in the upper stream raise prices. There is no exception in this incident. Tobacco products are not necessities, and they have relatively high external costs. Besides, there is an imbalance in demand and supply in the tobacco market. The purpose in imposing a higher Health and Welfare Surcharge on tobacco products was to shrink or reduce tobacco consumption and sales. Even though the three major distributors adjusted the end prices of tobacco products on the same date, it was a decision based on objective market conditions, rational concerns, and market competition. They all adopted rational strategies.

However, it seems that they made use of the opportunity to adjust prices on the date that the Health and Welfare Surcharge was imposed. The three distributors failed to create a cushion for the price increase, and they may have engaged in arbitrage activities. They chose to make price adjustments on the same date, which unavoidably affected core customers in terms of their control of information, acknowledgement, and choices. Core customers were affected and questioned the action. To maintain the order of the tobacco market and consumer rights, the FTC drew the attention of the three major distributors with regard to the Fair Trade Act and potential violations.

## **Taiwan Jin Ruei Co., Ltd. Violated the Fair Trade Act**

During its 854th Commissioners' Meeting on March 20, 2008, the FTC resolved the case on Taiwan Jin Ruei Co., Ltd. This company had published the phrase, "switch 20% of integrated loans to 2.35% at ease, without guarantors, mortgages and/or pledges" in advertising leaflets. The representation of its service was false, untrue and misleading. It violated Article 21(3) which applied mutatis mutandis to Paragraph 1 of the same Article of the Fair Trade Act. The unlawful activities were to cease from the second day following that on which the decision is served, and an administrative fine of NT\$ 80,000 was imposed.

Even though Taiwan Jin Ruei Co., Ltd. alleged that the 2.35% interest rate in the advertisement was based on loan information from the Land Bank of Taiwan and Bank of Taiwan, the FTC indicated that the above banks had not offered loans with a 2.35% interest rate or lower ever since October 2006. The disputed advertisement failed to specify applicable periods or restrictions on the promotion. According to the Bankers' Association of the Republic of China, loan promotions by its members from April 2005 to March 2006 included: EnTie Commercial Bank, "1.68% fixed for the first year," with limited periods, and Cathay United Bank, "C7 indexed personal loan," for which the interest rate was 2.47% for the first 6 months, which was close to the "2.35%" rate in the advertisement. The problem is that the 2.47% floating rate was only available for the "first 6 months," but the advertisement only specified "2.35%." It failed to specify material trading conditions such as the limited period, and was obviously misleading. In addition, the said company had not provided actual loans to support the interest rate claimed in the advertisement. It violated Article 21(3) which applied mutates mutandis to Paragraph 1 of the same Article of the Fair Trade Act.

## Statistics for FTC Self-initiated Investigations

In addition to complaints, applications for concerted action, merger notifications, and explanation requests, the FTC also initiates ex officio investigations into possible Fair Trade Act violations. From January to September 2009, there were 80 self-initiated investigations, reaching a total of 1,335 self-initiated investigations up to the end of September 2009. 1,273 cases were completed, with a closing rate of 95.4%. With regard to the decision ratio for FTC self-initiated investigations and complaints received, the former is between 17.1% and 48.4% higher than the latter. Thus, the FTC performs well in self-initiated investigations (see Table).

As for resource inputs, the FTC completed 113 self-initiated investigations from January to September 2009, investigating a total of 1,699 enterprises that involved 3,784 person-times. A total of 3,124 person-times were involved in investigations targeting 1,379 enterprises on market anomalies for necessities and the increase in the flour price; this comprised more than 80% of the total input in human resources and subjects.

As for the patterns of violations of the Fair Trade Act, of the 33 decisions reached between January and September 2009, 20 were violations of Article 21 of the Fair Trade Act, (false, untrue, or misleading advertisements, 60.6%), and 6 were violations of Article 23 (illegal multi-level sales, 18.2%). As of the end of September 2009, there had been a total of 647 decisions, with 186 violations of Article 21 (false, untrue, or misleading advertisements, 28.8%) and 149 violations of article 24 (deceptive or obviously unfair conduct, 23%).

Year	Decision Ratio	
	Decision Ratio (%)	
	Complaints	Self-initiated Investigations
2004	10.5	40.5
2005	6.7	36.1
2006	8.3	25.4
2007	9.2	42.6
2008	7.1	55.5
Jan.-Sep. 2009	10.0	45.7

Note: Decision ratio = [number of decisions / (number of cases closed – number of cases consolidated)] \* 100%

## FTC Activities in October 2009

■ On October 1, 2, 4, 7, 8, 14, 20, 21 and 23, the FTC sent representatives to the Fair Trade Act Camps at Meiho Institute of Technology, Fortune Institute of Technology, National Kaohsiung First University of Science and Technology, Cheng Shiu University, Shu-Te University, National Kaohsiung First University of Science and Technology, National University of Kaohsiung, and Leader University, respectively.

■ On October 12, the FTC held the “FTC Introduction to Fair Trade Commission Guidelines on Cases of Real Estate in Advertising” in Taipei City.

■ On October 15, 16, and 28, the FTC held the “Introduction to Trading Traps” at Shanhua Township Office in Tainan County, the Tainan Office of the Taiwan Tobacco & Liquor Corporation, and the An-ding Township Office of Tainan County.

■ On October 27, the FTC invited Associate Professor Hua-Mei Liu of the Graduate Institute of Technology Management at National Taiwan University of Science and Technology to lecture on “Regulations of the Fair Trade Act and the Petroleum Market.”

■ On October 27 and 30, the FTC organized “Introduction to Multi-level Sales Regulations” presentations in Taipei County and Taoyuan County, respectively.



1. The FTC held the “Fair Trade Act Camp” at Shu-te University.
2. Public participation at the “Fair Trade Act Camps.”
3. The FTC held the “FTC Introduction to Fair Trade Commission Guidelines on Cases of Real Estate in Advertising” in Taipei City.
4. The FTC invited Associate Professor Hua-Mei Liu of the Graduate Institute of Technology Management at National Taiwan University of Science and Technology to lecture on “Regulations of the Fair Trade Act in the Petroleum Market.”

## FTC International Exchanges in October 2009

- On October 13, the FTC took part in the conference call of the ICN “Competition Policy Implementation Working Group”
- On October 15, the FTC took part in the conference call of the ICN “Merger Working Group”
- From October 19 to 23, the FTC held the training programs for the Vietnam Competition Administration Department in Chinese Taipei.
- From October 19 to 23, the FTC sent representatives to the regular meeting in October of the OECD “Competition Committee” in France.
- On October 20, the FTC joined the 2009 “Second DVC for the Chinese Taipei and EU Trading IPR Workgroup”
- On October 23, the FTC participated in the First Proposal Meeting for the 34th Chinese Taipei-Japan Economics and Trade Advisory Conference
- On October 26, the FTC participated in the Working-Level Meeting for the 6th Chinese Taipei-Spain Economics and Trade Advisory Conference.
- From October 27 to 29, the FTC participated in the 2009 International Competition Network (ICN) Cartel Workshop in Egypt.



The FTC held the training programs for the Vietnam Competition Administration Department in Taiwan.