

Fair Trade Commission

【FTC Newsletter】

No.024

January, 2010

Publisher: Wu, Shioh-Ming

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Anxin Real Estate Broker Ltd. Violated the Fair Trade Act

During its 933rd Commissioners' Meeting on September 23, 2009, the FTC resolved the case on Anxin Real Estate Broker Ltd. (hereinafter called Anxin). Anxin is a broker in the housing market. When requesting a security deposit, it failed to inform purchasers of the difference and the substitutive relationship between a contract for a security deposit and the Ministry of the Interior version of an "offer letter". Such deception sufficiently affected trading, and violated Article 24 of the Fair Trade Act. The unlawful activities were suspended, and an administrative fine of NT\$150,000 was imposed pursuant to Article 41 of the aforesaid Act. The FTC indicated that, during the process of engaging in real estate brokerage, house buyers are obviously disadvantaged in terms of information compared to real estate brokers. Real estate brokers often take advantage of their dominant position to avoid their obligations regarding full information disclosure. To prevent disputes, the FTC has drawn up the "Fair Trade Commission Policy Statements on Real Estate Brokers." These Statements specify that, when a real estate broker requests a security deposit from a house buyer, it needs to tell the buyer that he/she may chose the Ministry of the Interior-version of the "offer letter" instead; and the buyer shall be informed of the difference and substitutionary relationship between the two. The house buyer shall then sign and confirm that the broker has fulfilled its

obligations. Otherwise, the broker may have violated Article 24 of the Fair Trade Act.

The FTC found that, the “Offer to Purchase the Real Estate” provided by Anxin to house buyers in real estate brokerage included a “security deposit” for brokerage and the parties’ rights and obligations. It failed to specify the Ministry of the Interior-version of the “offer letter” or the difference and the relationship between the Ministry of the Interior-version of the “offer letter” and the security deposit. In addition, the company could not prove that the above disclosure obligation had been fulfilled. It constituted an omission of material trading information. Even though the company alleged that its sales person had verbally informed the informer of the option to choose the Ministry of the Interior-version of the “offer letter” and that the informer had signed the “Offer to Purchase the Real Estate” in a hurry in order to complete the transaction, the company’s duty to disclose relevant information was not therefore exempted. The said company failed to disclose material trading information; this constituted a deception sufficient to affect trading order, violating Article 24 of the Fair Trade Act.

The High Administrative Court Sustained the FTC’s Decision on Cement Manufacturers



In late 2005, 21 domestic cement manufacturers jointly monopolized the supply and demand in the domestic cement market; the FTC imposed a total fine of NT\$ 210 million on the manufacturers. Manufacturers that disagreed with the original decision filed an administrative action. After a lengthy process, the Taipei High Administrative

Court finally reached a verdict in late September 2009. The manufacturers were all subject to the original FTC decision. The “Global Competition Review” (UK) awarded the FTC with the honor of being the Team of the Year 2005 for the measures it took against hardcore cartels. Following the Asian financial crisis in 1997, the economic downturn reduced the demand for cement in East Asian countries. Manufacturers competed to get rid of surplus supply at a low price, which affected the cement industry in East Asia. In 1999, international cement groups, such as the Mexican company Cemex Strategic Philippines, Inc. (hereinafter called Cemex) entered the Philippines market through mergers. In response to Chinese Taipei Cement’s

sales to the Philippines at low prices, Cemex sent representatives to Chinese Taipei. They negotiated with Taiwan Cement, Asia Cement and other manufacturers, offered to merge with domestic cement companies, and requested that they not sell cement to the Philippines. Cemex's request was rejected. Soon afterwards, Cemex cooperated with Taiyu Corp., a domestic cement importer. Cemex sold cement to Chinese Taipei at a low price based on Taiyu's cement silos next to Keelung Harbor and Taichung Harbor. As a result, the domestic cement price dropped from NT\$ 1,900/ton to NT\$ 1,100/ton. In May 2001, Cemex further acquired a cement silo in Taichung Harbor from Dongyu Corp., an affiliated company of the Tuntex Group. Later, Cemex contacted Tuntex Group in regard to Shixin Corp.'s cement silo located next to Kaohsiung Harbor.

In response to Cemex's low price sales, 9 domestic cement manufacturers (with the exception of Chien Tai Cement) acquired control of Shixin Corp. through a joint venture in April 2001, so that Cemex could not use Shixin's cement silo in Kaohsiung Harbor to directly unload or load goods. In order to further control the domestic supply of cement, the 9 manufacturers used Shixin as an information exchange and supervision platform. They further made the following decision: Shixin was to sign a "sales promotion agreement" with Chien Tai and Tongfajin Corp in September 2001. Supposedly, Chien Tai and Fongfajin would then sell cement on behalf of Shixin over a two-year period, and Shixin would pay Chien Tai and Fongfajin NT\$ 270 million in return. However, Chien Tai and Fongfajin closed and all their employees were fired the next month. In fact, Chien Tai and Fongfajin both exited the domestic market. Next, Shixin acquired the following at a price much higher than the foreclosure price: Tenghui Corp.'s cement grinding plant in Daliao Industrial Park, Kaohsiung County, as well as the control rights to Taiyu's cement silo in Kaohsiung Harbor and other cement distribution channels. Thus they completely blocked foreign cement companies from acquiring cement silos and other cement import channels in southern Chinese Taipei. To further avoid any cement imports from the top, they threatened to file an anti-dumping lawsuit. On the other hand, they reached an agreement with Japanese cement companies in April 2001 to gradually reduce Japanese cement imports. In July 2001, they signed the "temporary market consensus" and the "Philippines Accord" with international cement groups, agreeing not to sell cement in the domain of opposing parties. As a result, Thailand Asia Cement Company of the Italian cement group, the only group among the top 6 cement groups worldwide that had not invested in the Philippines, could raise cement quotes in the domestic market, thereby creating an international cement cartel. In Chinese Taipei, cement importers that owned silos also took part in the cartel: Guoxing, Huanzhong, Jiaguo, Wanqing, Taiyu, and Dongyu. They stopped cement imports and started selling domestically-made cement (Guoxing chose to use limited imported cement). After the domestic market was monopolized, Chia Hsin, Universal, Southeast and Hsin Hsin formed a joint venture, the Huadong Corp., to coordinate and adjust cement sales and regions in

central and southern Chinese Taipei. Even though Chia Hsin shut down factories and exited the domestic cement market, it controlled Huadong and the sales channels for domestic cement in northern, central, and southern Chinese Taipei, enjoying the largest profits from the resale of cement in Chinese Taipei. In addition, China Hi-ment Corp. was the largest domestic supplier for blast furnace cement. Since Taiwan Cement, Asia Cement, Chia Hsin, Universal and Southeast had acquired major shareholdings in China Hi-ment, in order to control the quantity of water-quenching slag imports from Japan and maintain domestic cement needs, they required that China Hi-ment negotiate the quantity of water-quenching slag imports with Japanese steel companies. As a result, the price of imported water-quenching slag went up, causing the domestic cement price to increase.

This case set many records in domestic anti-trust law practice. First, it went through four years of investigation. This was not possible after the Administrative Penalty Act restricted the limitation of prosecution to 3 years. Second, there were more than 1,000 people-times allocated to this case, and more than 600 subjects (including foreigners) were interviewed; the documents exceeded 20,000 pages, with more than 100 files. These were all new records for an individual investigation. Third, the type of actions and disputes involving the cement companies included “using joint ventures to control distribution channels,” “using affiliate companies in disguise,” “non-interfering international cartel agreements,” “an international cartel exchanging key facilities,” “using resales to substitute for the mass control under the cartel,” “obstructing usage of a substitute for cement, i.e., water-quenching slag,” “agreeing to let factories become idle or shut down, and businesses to close or exit the market,” “mutual cooperation in reselling or packaging authorization,” “establishing a platform for mutual supervision and information exchange,” “adopting a standard pricing strategy including fares,” “dividing sales regions close to the factories,” and “limiting product loads and shortening the payment period to increase the price.” It was an unprecedented case in terms of complexity. Fourth, the restraints on competition had major impacts on ready-mixed concrete, construction, civil engineering, building, and relevant markets. The negative impacts of those restraints were unprecedented. Fifth, this was the first time a “hearing” was held by the government authorities according to the Administrative Procedure Act. The decision improved and strengthened the FTC’s status in international law enforcement.

Professor Zhiming Chen believes that certain market structures would impede cartels, and that cartels cannot avoid holding costs and a stabilizing mechanism. According to empirical studies on the concentration-collusion doctrine, higher concentrations of industry may encourage cartels. Thus, all competition authorities around the globe use the market concentration rate as an important index to inspect and determine whether the market is anti-competitive. Since the organization of concerted actions is internally unstable, members of the concerted action must refrain from increasing production for higher profits; however, if individual members can deceive other members and increase production secretly, such

actions can enhance their own profit. Thus, members of a concerted action have incentives for deviation. Since concerted actions are unstable by nature, it is concluded both in theory and practice that a successful concerted action must resolve the following three issues in a cartel: to “reach a consensus,” “discourage deviations,” and “prevent new competitors.” In the practice of the international competition authorities, if companies are proved to have reached a consensus, to have discouraged deviations, or to have prevented new competitors from affecting the stability of a cartel, the facilitating practice can be indirect evidence for the existence of a cartel.

The case became another example, following the concerted action by CPC Corporation and Formosa Petrochemical Co., of where facilitating practices were considered to be evidence of an agreement to engage in a concerted action. Professor Juwei Zeng, a scholar in public economics, used the following four strategies to describe the concerted action in this case: “to work together both from inside and outside,” “to replace existing companies with a new one,” “to get rid of competitors,” and “to turn enemies into allies.” This echoes economist Steven Salop’s famous “raising rivals’ cost” theory. In the theory, after companies block market entry and acquire key facilities, they will let the factory become idle or maintain a low rate of utilization, thus raising the costs of entry for future competitors and creating entry barriers. After the company with key facilities successfully blocks the market, there will be fewer and fewer imports, and marginalized competitors with or without limited key facilities will have no choice but to join the cartel. Therefore, the strategy both increases market barriers and stabilizes the cartel. The theories were proved in this case.

Yi-nuo Business Consultants Co., Ltd. Violated the Fair Trade Act


During its 891st Commissioners’ Meeting on December 3, 2008, the FTC resolved the case on Yi-nuo Business Consultants Co., Ltd. (hereinafter called Yi-nuo). Yi-nuo carried an advertisement on an English Training Program on the website of the Apostle Business English Education Center. The advertisement claimed the following, “[the company] has nearly 100 trained English teachers who have certificates in teaching English,” and “relevant enterprises which presently adopt the company’s business English training program: Li & Fung Group, Formosa Plastics Corporation, Nan Ya Plastics Corporation, Li & Fung Limited, and Foxconn Electronics Inc.” The representations of the quality and the contents of the service were false, untrue and misleading, and the company violated Article 21(3) which applied mutates mutandis to Paragraph 1 of the same Article of the Fair Trade Act. The illegal activities were to be suspended from the day after the decision was served, and an administrative fine of NT\$ 180,000 was imposed.

The FTC indicated that Yi-Nuo alleged on its website, “[the company] has nearly 100 trained

English teachers who have certificates in teaching English.” The company said the statement was based on data collected from those who worked for them and the website, “104 Job Bank.” The criteria were specified in the recruiting advertisement. However, the wording on the website was to be interpreted as the number of English teachers “who were trained and have certificates in teaching English.” This differs from those who were recruited based on the advertisement. The actual qualifications of an applicant cannot be ensured before the interview process. Merely requiring a certificate in teaching English on the recruiting advertisement does not guarantee qualified applicants. Besides, information submitted by applicants is not necessarily binding. Even if an applicant submitted a resume, he/she may not actually sign the contracts and accept the job when needed. Thus, data submitted by on-line applicants are not the same as available teachers. Yi-nuo’s allegation in the advertisement constituted false, untrue, and misleading advertisements.

In addition, the company alleged on its website: “relevant enterprises which presently adopt the company’s business English training program: Li & Fung Group, Formosa Plastics Corporation, Nan Ya Plastics Corporation, Li & Fung Limited, and Foxconn Electronics Inc.” Yi-nuo admitted that the webpage was established in 2006 and had not been renewed since. Thus the advertisement referred to previous conditions, but none of above-mentioned companies was still in contact. Since Yi-nuo does not work with the above-mentioned companies at present, the allegation was contrary to facts and constituted false, untrue, and misleading representations. Besides, Yi-nuo said that there were more than 30 organizations using its English training program. In fact, only Li & Fung Limited still works with Yi-nuo; there is no further evidence supporting the allegation. After asking the companies listed in the advertisement, the institutions, schools and companies replied that they had never used Yi-nuo’s English training program. The FTC concluded that Yi-nuo had made untrue representations in the said advertisement which might have led to misunderstanding among trading counterparts regarding the quality of service it provided.

■ 企業商用英語教育網是一個有別於台灣所有英語教育機構（俗稱補習班）的資訊網站，在這裡我們專門為企業客戶量身訂做屬於客戶自己需求的英語訓練課程，在這裡我們提供所有客戶於業務往來時所需求的英語溝通技巧，在這裡我們提供專業的師資充足的師資來做企業或是外派教學，專業的師資與充足的師資率是先驅的驕傲，正因為這樣，我們在過往台灣的經驗裡，專門為大企業、學校合作外派訓練課程或是為專業經理人打造屬於個人的英語訓練課與專屬的英語顧問（家教），創造無數的成功經驗與傲人的成就，雖然我們沒有台灣一般英語教育機構的高知名度，但是我們相信專業與獨一無二是先驅提供給客戶最好的保證，■ 台灣認為「口碑來自於客戶的成就」



■

專業且充足的師資庫：我們擁有近 100 位接受過訓練且擁有英語教學專業認證與證書的英語老師，全供服務。

Statistics for Requests for Explanations

I. Definition

According to the FTC's "Types and Definitions for Statistics on Fair Trade Act Cases," requests for explanations are divided into the following three categories based on their closing features: explanation cases, inquiry-answering cases, and termination of reviews. A brief introduction is provided below:

1. Explanation cases

These are explanations that are discussed and given at FTC Commissioners' Meetings to interpret or analyze laws (the Fair Trade Act or relevant regulations) when the FTC receives requests for explanations from government authorities, enterprises or the general public.

2. Inquiry-answering cases

(1) These refer to requests covered by existing FTC explanations, where there is no need for a review by the Commissioner's Meeting and where existing explanations can be applied; or cases where an explanation is not needed because the disputed law or regulation is quite clear and undisputable. In such situations the cases should simply follow existing regulations.

(2) Replies to requests for verification made by the court or prosecutors.

3. Termination of reviews

These are requests related to issues that are not subject to the FTC's authority, where the FTC has no authority to provide an explanation, or where the requests were unclear and the applicant failed to reply after the FTC requested supplementary information. Detailed definitions are available on the FTC's website. ([http://www.ftc.gov.tw/statistics/Major Statistical Terminologies and Their Definitions](http://www.ftc.gov.tw/statistics/Major%20Statistical%20Terminologies%20and%20Their%20Definitions))

II. Statistics for Requests for Explanations Executed by the FTC

Between January and October 2009, the FTC received 31 requests for explanations. A total of 27 were closed within the same period, of which 20 were inquiry-answering cases, equivalent to 74.1% of the cases closed.

Statistics on Requests for Explanations

Unit: case

Year	Requests for Explanation Received	Cases Closed			
		Total	Explanation Cases	Inquiry-answering Cases	Termination of Reviews
2006	46	47	-	35	12
2007	55	58	3	36	19
2008	36	36	7	22	7
Jan.-Oct. 2009	31	27	1	20	6

FTC Activities in November 2009

- On November 3, the FTC held the “2009 FTC Lectures on the Fair Trade Act: Regulations and Case Study on Business Activities of Land Administration Agents under the Fair Trade Act” in Tainan City.
- On November 3, 9, 10, 11, 12, and 13, the FTC hosted the “Introduction to Trading Traps” at the Local Tax Bureau of Tainan County, the Fire Bureau of Tainan County, and the Baihe Township Office of Tainan County.
- On November 7, the FTC participated in and hosted a reward program for answering questions regarding the Fair Trade Act at the “2009 Consumer Safety Carnival” held by the Consumer Protection Commission in Taichung.
- On November 5, 18, 19, 24, and 26, the FTC held the Fair Trade Act Camps at National Cheng Kung University, Fortune Institute of Technology, Tainan University of Technology, and National Pingtung Institute of Commerce.
- On November 13, the FTC held a seminar on “Merger Notification Filed by Taiwan Mobile Co., Ltd., Shengting, Kbro Co., Ltd., and Subordinating Cable Systems Operators.”
- On November 16, the FTC held a seminar on “The Market Structure and Competition in the Operating System Software Industry.”
- On November 23, the FTC held the 2009 FTC “Seminar on Cases and Procedures.”
- On November 24, the FTC held the “Introduction to FTC Regulations on Financial-Related Associations.”



1. The FTC held the “2009 FTC Lectures on the Fair Trade Act: Regulations and Case Study on Business Activities of Land Administration Agents under the Fair Trade Act” in Tainan City.
2. The FTC hosted a seminar on “Merger Notification Filed by Taiwan Mobile Co., Ltd., Shengting, Kbro Co., Ltd., and Subordinating Cable Systems Operators.”
3. The FTC held a seminar on “The Market Structure and Competitions in the Operating System Software Industry.”
4. The FTC held the “Introduction to FTC Regulations on Financial-Related Associations.”

FTC International Exchanges in November 2009

- On November 2, 3, and 4, the FTC joined the competition program “Regional Cartel Workshop-Bid Rigging and Cartel” held by the OECD-Korea policy Centre.
- On November 4, the FTC took part in the conference call of the ICN “Experience Sharing --- Merger Proposals.”
- On November 4, 5, and 6, the FTC sent representatives to the “14th International Workshop on Competition Policy” held by the Korea Fair Trade Commission.
- On November 10, the FTC took part in the conference call of the ICN Merger Working Group.
- On November 17, the FTC took part in the conference call of the ICN “Proposal: the Role of International Organizations.”
- On November 18, the FTC took part in the conference call on “Excessive Pricing” hosted by the ICN “Unilateral Conduct Working Group.”
- On November 26 and 27, the FTC sent representatives to the “34th Chinese Taipei-Japan Economics and Trade Advisory Conference” in Japan.