

Fair Trade Commission

【FTC Newsletter】

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Merger of Phison, SSMS and Nextorage Not Prohibited

The FTC decided at the 1,497th Commissioners' Meeting on Jul. 15, 2020 to cite Article 13 (1) of the Fair Trade Law and approve the merger of Phison Electronics Corporation (hereinafter referred to as Phison), Sony Storage Media Solutions (hereinafter referred to as SSMS), an affiliate of Sony Corporation, and Nextorage Corporation (hereinafter referred to as Nextorage).

Phison intended to jointly acquire the shares of Nextorage with SSMS to manage and control Nextorage together. The condition complied with the merger patterns described in Subparagraphs 2, 4 and 5 of Article 10 (1) of the Fair Trade Law. At the same time, the sales of the merging parties in the previous fiscal year also achieved the filing threshold specified in Subparagraph 3 of Article 11 (1) of the Fair Trade Law whereas the exemption regulation set forth in Article 12 of the same Law did not apply. Therefore, a merger notification was filed with the FTC.

Phison mainly produced NAND flash memory controllers and flash memory modules and also manufactured OEM flash memory products. SSMS designed and manufactured Sony's flash

memory products and storage devices such as compact discs and magnetic tapes. However, SSMS transferred the flash memory product business to its wholly-owned subsidiary Nextorage in October 2019. Hence, upstream-downstream vertical supply relations existed between the merging parties. The merging parties would still face fierce competition from other businesses in the relevant market and, in addition, the market share of SSMS was not high. Moreover, before the merger SSMS purchased most of the NAND flash memory controllers it needed from Phison, but the purchased quantities only accounted for a rather small percentage of the total amount sold by Phison. For this reason, the FTC concluded that the merger would not create vertical foreclosure and, therefore, there would be no concern about any significant competition restraint being created.

After obtaining the opinions of the competent authority of the industry in question, competitors as well as upstream and downstream trading counterparts and making a general assessment of the aforementioned factors, the FTC cited Article 13 (1) of the Fair Trade Law and did not prohibit the merger.

Merger of SB, NAVER and LINE Not Prohibited

The FTC decided at the 1,499th Commissioners' Meeting on Jul. 29, 2020 not to prohibit the merger of SoftBank Corporation (hereinafter referred to as SB) and Z Holdings Corporation with NAVER Corporation (hereinafter referred to as NAVER) and LINE Corporation (hereinafter referred to as LINE) by citing Article 13 (1) of the Fair Trade Law.

SB and NAVER and their affiliates intended to jointly acquire the shares of LINE and manage as well as control LINE together. The condition complied with the merger patterns described in Subparagraphs 2, 4 and 5 of Article 10 (1) of the Fair Trade Law. Moreover, the sales of the merging parties all achieved the filing threshold specified in Subparagraph 3 of Article 11 (1) of the Fair Trade Law while the exemption regulation set forth in Article 12 of the same Law did not apply. Therefore, SoftBank Group Corporation (hereinafter referred to as SBG) and NAVER filed a merger notification with the FTC.

The domestic economic activities of the affiliates of SBG mainly included the R&D and licensing of microprocessors and processing systems of Arm Limited and the reinsurance and smartphone buyback and redeeming of Brightstar Re., Ltd. These business operations had no horizontal competition or vertical upstream-downstream supply chain relations with the instant messaging software, online advertising, mobile payment and ecommerce operations of LINE, an affiliate of NAVER. Therefore, as far as the domestic market was concerned, the case was a conglomerate merger and the primary competition concern would be whether the possibility of weakening competition existed. After taking into account the factors of regulation changes,

technological advancements and whether the merging parties had established cross-industry development plans, the FTC thought there were no significant potential competition relations between the merging parties and, therefore, decided the merger did not entail the possibility of weakening competition.

The FTC also evaluated the combined effect of the merger. The applicants stated that Yahoo Japan Corporation (hereinafter referred to as Yahoo Japan, in spite of Yahoo! Kimo of Yahoo Taiwan, an affiliate of Yahoo Hong Kong, also managing a portal website and ecommerce, so that Yahoo Taiwan belonged to a different group and was not an affiliate of any of the merging parties) had no plans for the time being to promote its business in the domestic market or promote its operations in the domestic market by using LINE as a cross-border ecommerce window. However, even if Yahoo Japan went through LINE to enter the domestic ecommerce market, since ecommerce products marketed through B2C or B2B2C would still need well-structured logistic channels to reach consumers, transportation costs for products that consumers purchased from Yahoo Japan or products marketed by domestic online sellers through Yahoo Japan would be higher than what domestic online shopping platforms would charge while the delivery time would also be longer. Furthermore, if after merger LINE refused to provide or discriminatorily provided official account numbers, or refused to accept advertisements or provide shopping guide services to Yahoo Japan or competitors, advertisers would simply switch to other online advertising media. In the end, LINE would suffer loss of advertising income in general retailers. They did not only sell products from specific regions or of specific categories. Hence, even if Yahoo Japan used LINE to enter the domestic ecommerce market after the merger, the businesses that it could replace would more likely be domestic agents or suppliers of Japanese products. For this reason, the FTC concluded that the merger would not lead to any significant combined effect of competition elimination.

The FTC also assessed the competition issues indicated in data associated with the merger. Since other online services could also access user contact information when they provided services, the personal information collected by the merging parties would not be unique. As for the digital footprint of users, its applicable value could not last long. Other online service providers could also gather information regarding how users used their websites or apps and analyze the habits of users. Hence, while the digital footprint collected by the merging parties might have its particularities, it was by no means irreplaceable. It would be unlikely that the merging parties would gain a competitive edge by accumulating such data over time.

In conclusion, the FTC thought the merger would not lead to significant competition restraints and therefore did not prohibit the merger by citing Article 13 (1) of the Fair Trade Law.

Extension of Concerted Action of Chiao Thai Hsing and 41 Other Companies Approved with Undertakings Attached

The FTC decided at the 1,507th Commissioners' Meeting on Sep. 23, 2020 to cite Subparagraph 5 of the proviso in Article 15 (1) and Article 16 (2) of the Fair Trade Law and ratify the application from Chiao Thai Hsing Enterprise Co., Ltd. (hereinafter referred to as Chiao Thai Hsing) and 41 other companies for permission to extend their joint shipment of purchased wheat imports. The joint shipment was extended for five years until Sep. 30, 2025.

Earlier, Chiao Thai Hsing and the 41 other companies applied to the FTC for exceptional concerted action approval to engage in the joint shipment of wheat imports and the FTC approved the application on Sep. 17, 2015 via Kung Lian Tzu Approval Decision No. 104006 with undertakings attached. As the exceptional concerted action approval was about to expire, Chiao Thai Hsing and the 41 other companies acted according to Article 16(2) of the Fair Trade Law and applied for the extension.

After reviewing the application, the FTC concluded that wheat and flour were food as defined in the Food Administration Act. Joint shipment of purchased wheat imports could allow the participating companies to enhance their price negotiation ability, ensure wheat supply and share the cost of each shipment. Under such circumstances, the participating companies would have the incentive to reflect the saved cost on product prices and maintain stable supply. In turn, the economic advantage could benefit midstream and downstream buyers and consumers. Meanwhile, the competent authority of the industry of concern also pointed out that the joint shipment of purchased wheat imports could increase the price negotiation ability of the participating companies. It could help related businesses and maintain a stable supply for flour product makers and in the consumer market. Therefore, the FTC thought that the concerted action could benefit the overall economy and public interest and decided to approve the extension application with undertakings attached.

The undertakings included the following. The applicants may not use the approval as an excuse to engage in other concerted actions or prevent other companies from joining the concerted action without justifiable cause. In addition, they may not use the approval to prevent any one applicant from deciding the amount of wheat imports it intends to purchase or purchasing and bringing in wheat imports on its own. At the same time, the execution of the concerted action shall be reported to the FTC in writing on a quarterly basis.

CTS in Violation of Fair Trade Law by Adopting Deceptive Means to Market Its Products

The FTC decided at the 1,509th Commissioners' Meeting on Oct. 7, 2020 that Conveyor Transmission Sys Co., Ltd. (hereinafter referred to as CTS) had violated Article 25 of the Fair Trade Law by using the company name of its competitor Jet Chen Shin Yen Co., Ltd. (hereinafter referred to as JCSY), Jet Chen, to produce and post an illegitimate keyword advertisement on Google. The practice was obviously unfair conduct able to affect trading order. The FTC imposed an administrative fine of NT\$100,000 on the company.

CTS used the name Jet Chen, the company name of its competitor, in a keyword advertisement and posted the text: "If you need Jet Chen's products, go to CTS." The link to the website of CTS was also shown in the advertisement. The overall presentation was likely to mislead trading counterparts or potential trading counterparts into believing that both companies produced the same series of products or had a cooperative relationship. Thus, CTS could promote its products and increase transaction opportunities. However, as JCSY had invested considerable resources to develop its business, the name Jet Chen certainly represented the achievement of the company's economic effort. By producing and posting the illegitimate keyword advertisement, CTS obviously harmed the reputation of JCSY and stole the latter's achievement, which represented certain profitability.

By using the company name of Jet Chen in the keyword advertisement and listing both JCSY and CTS in the search results, CTS affected the market trading order in which price, quality and other types of performance competition formed the core. The practice exploited the achievements of others. It was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law.

WanPay Violated Multi-level Marketing Supervision Act by Beginning Operation without Filing with the FTC in Advance

The FTC decided at the 1,498th Commissioners' Meeting on Jul. 22, 2020 that WanPay Digital Marketing Co., Ltd. (hereinafter referred to as WanPay), a multi-level marketing business, had violated Article 6 (1) of the Multi-level Marketing Supervision Act by starting operation without filing with the FTC in advance. The FTC imposed an administrative fine of NT\$300,000 on the company.

Between Jul. 2018 and Mar. 2020, WanPay posted on YouTube and Facebook and also at the company's rented office a description of its "WanPay mobile intelligent platform" services, which included WanPay mobile payment and its Wan-to-home online mall agency and promotion systems. The personnel the company recruited were divided into six levels, namely, agent, specialist, section chief, manager, department manager and director general. Those holding a section chief position or higher could define the WanPay mobile intelligent platform service performance of their subordinates and the sales to be achieved by stores with which they signed contracts. They could enjoy a "responsibility allowance," a "professional allowance" and other bonuses. During that period, WanPay promoted or marketed 700 to 800 mobile intelligence services, recruited around 1,000 people for the agent level and signed contracts with more than 4,000 stores.

The operation of WanPay was no doubt conducted through the people-to-people multi-level marketing approach. The company promoted or marketed its WanPay intelligent platform services via a people network formed through its organizational structure. The bonuses were given according to a multi-level commission issuance system and calculated according to the performance of each team. Without question, it was multi-level marketing as defined in Article 3 of the Multi-level Marketing Supervision Act. The company established the aforesaid mobile intelligent platform service marketing system, accepted applicants to join the company as agents, offered services and issued bonuses. It engaged in consolidated planning and marketing. However, the company did not file with the FTC before starting operation. The conduct was in violation of Article 6 (1) of the Multi-level Marketing Supervision Act.

Tai Wei Xuan Buddhist Artifacts Posted False Advertisements for Its Products in Violation of the Fair Trade Law

The FTC decided at the 1,511th Commissioners' Meeting on Oct. 21, 2020 that Tai Wei Xuan Buddhist Artifacts had violated Article 21 (1) of the Fair Trade Law by claiming that the "Buddhist Calendar 2543 –Teacher Popularity Buddha statue" the company was marketing on shopee.tw was made of real elephant bone. It was a false and misleading representation with regard to quality of product and could also affect transaction decisions. The FTC imposed an administrative fine of NT\$50,000 on the company.

When marketing the "Buddhist Calendar 2543 – Teacher Popularity Buddha statue" on shopee.tw, Tai Wei Xuan Buddhist Artifacts posted the wording of "real elephant bone" and "this popularity Buddha...the one and only occasion we release our real elephant bone statues from our own collection for believers...this sacred object was produced in the early years and Thailand has banned sales of sacred objects made of real elephant bone ever since; therefore, the quantity is very limited." The advertisement gave consumers the impression that the product in question was made of real elephant bone and the quantity was rather small; hence, it was a collectible item. Nonetheless, when the Changhua County Government conducted an onsite inspection of the product, there was no indication that it was made of real animal bone. It was plastic. The product was described as being made of elephant bone, limited in quantity and, therefore, a collectible item. The description was a factor that could influence consumers' transaction decisions, but the advertisement was obviously inconsistent with reality and could cause the general public to have wrong perceptions. Undoubtedly, it was a false and misleading representation in violation of Article 21(1) of the Fair Trade Law.

Statistics on Cases in which Ex Officio Investigations were Initiated

To establish and maintain fair and reasonable competition order, besides processing informed cases, applications for approval of concerted actions and merger notifications, and applications for legal interpretation, the FTC also takes the initiative to investigate activities likely to violate the regulations under its jurisdiction or jeopardize the public interest. In 2020, the FTC launched ex officio investigations in 276 cases, reviewed 375 cases (including 99 cases that remained unclosed as of the end of 2019) and completed 281 cases. On average, the FTC closed a case in 104 days (Figure 1). Between 1992 when the FTC was established and 2020, the FTC conducted ex officio investigations in 4,946 cases and closed 4,852 cases. The closure rate achieved was 98.1%.

In 2020, the FTC processed and completed 281 cases in which ex officio investigations were launched. Analyzed by handling result, there were 51 cases (18.1% of total completed cases, with 53 dispositions issued and 68 businesses sanctioned) in which sanctions were made against violations. No sanctions were administered in 52 cases (18.5%) and investigations were suspended in 175 cases (62.3%). Between 1992 when the FTC was established and the end of 2020, the FTC completed ex officio investigations in 4,852 cases, made sanctions in 1,433 cases (29.5%), issued 1,600 dispositions and sanctioned 2,231 businesses (Table 1).

Figure 1 Average Number of Days Taken before Closure of Cases in which Ex Officio Investigations were Initiated

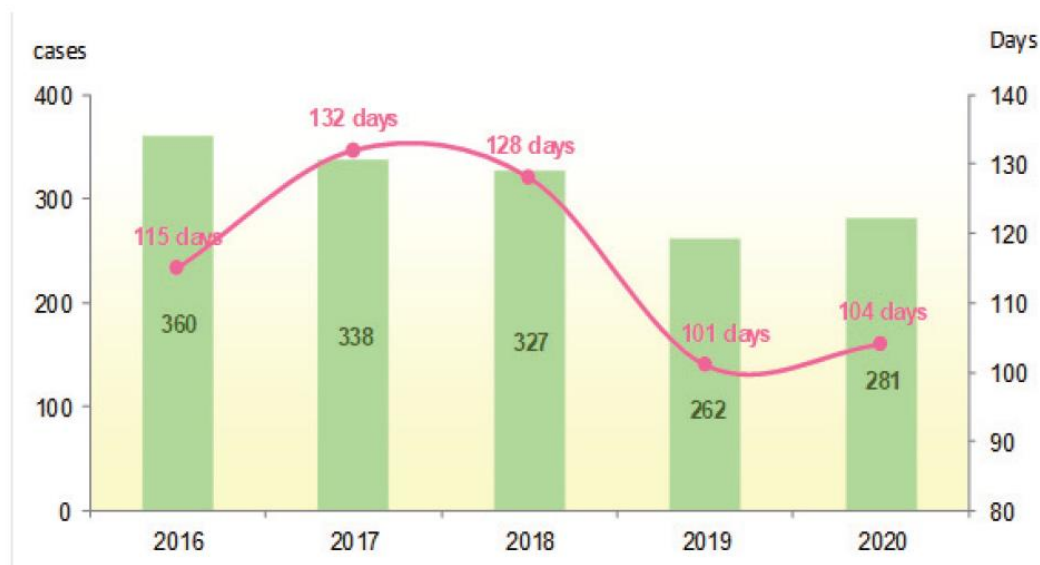


Table 1 Statistics on Results of Cases in which Ex Officio Investigations were Initiated

Year	Sanction			No Sanction	Administrative Disposal	Suspension of an investigation	Termination of Investigation	Others
	No. of Cases	No. of Dispositions Issued	No. of Enterprises Sanctioned					
Total	1,433	1,600	2,231	1,381	120	1,501	1	416
1992 to 2015	1,096	1,240	1,775	965	114	772	-	337
2016	91	97	129	112	2	148	-	7
2017	80	80	94	104	2	135	-	17
2018	68	79	107	85	1	124	1	48
2019	47	51	58	63	1	147	-	4
2020	51	53	68	52	-	175	-	3

Note: The term "Others" refers to the same cases transferred from other agencies or cases consolidated after the FTC received complaints from private citizens.

Among the cases in which ex officio investigations were launched in 2020, the FTC issued 53 dispositions. The administrative fines imposed totaled NT\$623.28 million. Analyzed according to violation of the Fair Trade Law and the Multi-level Marketing Supervision Act, there were 29 cases (54.7%) involving violation of the Multi-level Marketing Supervision Act and 19 cases (35.8%) associated with false or misleading advertising in violation of the Fair Trade Law. The two types totaled 90.5% (Figure 2). Observed by the amounts of the fines, the NT\$603.73 million imposed for concerted actions in violation of the Fair Trade Law (the concerted action of HDD suspension assembly suppliers) formed the largest proportion, followed by the NT\$12.60 million imposed against false or misleading advertising.



Figure 2 Number of Dispositions Issued in 2020 Cases in which Ex Officio Investigations were Initiated – Classified by Type of Violation

FTC Activities in November and December 2020

- ◆ On Nov. 2, the FTC held a promotional presentation entitled “The Regulations in the Fair Trade Law with Regard to Trade Associations and Antitrust Regulations to Be Followed” in Taipei City.
- ◆ On Nov. 6, 13 and 20, the FTC held the “2020 Workshop on the Fair Trade Law and Cases for the Elite in central island” in Taichung City.
- ◆ On Nov. 13, the FTC held the “Presentation on the FTC’s Enforcement in Cases Regarding Cable TV Businesses – an Overview of the Leniency Policy and Rewards for Informers” in Taipei City.
- ◆ On Nov. 17, 19 and 27, the FTC held the “Fair Trade Law and Multi-level Marketing Supervision Act Training Camp” at the Department of International Trade of National Taichung University of Science and Technology, the College of Law of Tunghai University and the Department of Asia-Pacific Industrial and Business Management of the National University of Kaohsiung, respectively.
- ◆ On Nov. 19 and Dec. 3, the FTC held the presentation entitled “The Petrochemical Industry and Fair Trade Law Regulations” in Taichung City and Kaohsiung City, respectively.
- ◆ On Nov. 20, the FTC held the “2020 Fair Trade Law Special Topic Lecture – Regulations in the Fair Trade Law (Antitrust Law) and Case Analysis” in Kaohsiung City.
- ◆ On Nov. 24, Professor Wang Lidar gave a lecture entitled “Likely Lawsuit Procedures and Legal Sanctions Associated with Cross-border Concerted Actions: Using the Civil Lawsuit Filed by HP against Quanta Storage’s Violation of US Antitrust Law as an Example” at the invitation of the FTC.
- ◆ On Nov. 24, the FTC’s staff members went to Kaohsiung to serve as the instructors of a course entitled “Regulations against False Advertising and Cases” which was part of the “2020 Voluntary Supervisors Orientation and End-of Year Review Meeting” held by the Kaohsiung Branch of the Bureau of Standards, Metrology and Inspection of the Ministry of Economic Affairs.
- ◆ On Nov. 30 and Dec. 7, the FTC held a promotional presentation entitled “Acquisitions in the Electronics Industry and the Fair Trade Commission Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement of Copyright, Trademark, and Patent Rights” in Hsinchu County and Tainan City, respectively.
- ◆ On Dec. 2, the teachers and students of the Graduate Institute of Technology Management of National Taiwan University of Science and Technology attended the “Fair Trade Law and Multi-level Marketing Supervision Act Training Camp” at the FTC.
- ◆ On Dec. 2, 7 and 16, the FTC held the “Fair Trade Law and Multi-level Marketing Supervision Act Training Camp” at the Department of Economic and Financial Law of the National University of Kaohsiung, the Graduate Institute of Science and Technology Law of National Kaohsiung University of Science and Technology and the Department of

Political Economy of National Sun Yat-Sen University, respectively.

- ◆ On Dec. 9, the teachers and students of the Graduate School of Law of Soochow University attended the “Fair Trade Law and Multi-level Marketing Supervision Act Training Camp” at the FTC.
- ◆ On Dec. 10, the FTC held the “2020 Junior and Senior High School Fair Trade Law Seed Teacher Workshop” in Changhua County.
- ◆ On Dec. 14 and 21, the FTC held a promotional presentation on “Law Observance and Competition in the Food Industry” in Taichung City and Tainan City, respectively.
- ◆ On Dec. 17 and 18, the FTC held the 27th “Competition Policy and Fair Trade Law Seminar” at the College of Law of National Taiwan University.
- ◆ On Dec. 24, FTC Commissioner Hong Tsailung gave a lecture entitled “From Loss Aversion, Fairness Awareness to Behavioral Antitrust – Some Interesting Viewpoints in Behavioral Economics” at the invitation of the FTC.



1. The FTC holding the “The Regulations in the Fair Trade Act with Regard to Trade Associations and Antitrust Regulations to be Followed” in Taipei City
2. The FTC holding the “2020 Workshop on the Fair Trade Act and Cases for the Elite in Central Taiwan” in Taichung City
3. The FTC holding the “Presentation on the FTC’s Enforcement in Cases Regarding Cable TV Businesses – an Overview of the Leniency Policy and Rewards for Informers” in Taipei City
4. The FTC holding the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of International Trade of National Taichung University of Science and Technology



5.The FTC holding the "2020 Fair Trade Act Special Topic Lecture – Regulations in the Fair Trade (Antitrust) Act and Case Analysis" in Kaohsiung City

6.The FTC holding a promotional presentation entitled "Acquisitions in the Electronics Industry and the Fair Trade Commission Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement of Copyright, Trademark, and Patent Rights" respectively in Hsinchu County

7.The FTC holding the presentation entitled "The Petrochemical Industry and Fair Trade Act Regulations" in Kaohsiung City

8.The FTC holding the 27th "Competition Policy and Fair Trade Act Seminar" at the College of Law of National Taiwan University

9.The FTC holding a promotional presentation on "Law Observance and Competition in the Food Industry" respectively in Tainan City

10.The FTC inviting FTC Commissioner Hong Tsailung to give a lecture entitled "From Loss Aversion, Fairness Awareness to Behavioral Antitrust – Some Interesting Viewpoints in Behavioral Economics"

FTC International Exchanges in November and December 2020

- ◆ On Nov. 3, the FTC attended a videoconference held by the ICN Merger Working Group.
- ◆ On Nov. 10 and 26, the FTC attended the Digital Enforcement Summit held by the Competition Bureau of Canada via video conferencing.
- ◆ From Nov. 30 to Dec. 4, the FTC attended the OECD Competition Committee November Routine Meeting videoconference.
- ◆ From Dec. 7 to 10, the FTC attended the 19th OECD Global Forum on Competition videoconference.
- ◆ On Dec. 16, the FTC attended the 5th OECD Competition Committee's "Meeting of High-level Representatives of Asia-Pacific Competition Authorities" which was conducted via video conferencing.



1. The FTC attending the OECD Competition Committee's meeting entitled the "Second Working Group Digital Advertising Market" which was conducted via video conferencing
2. The FTC attending the Global Forum on Competition entitled "Abuse of Dominance" which was conducted via video conferencing
3. The FTC attending the Global Forum on Competition entitled "Economic Analysis in Merger Investigations" which was conducted via video conferencing
4. The FTC attending the 5th OECD Competition Committee's "Meeting of High-level Representatives of Asia-Pacific Competition Authorities" which was conducted via video conferencing