

## Fair Trade Commission

### 【FTC Newsletter】

No.098

April, 2021

Publisher: Lee, May

Editor-in-Chief: Hu, Kuang-Yu

|                                    |  |
|------------------------------------|--|
| Selected Cases                     | Merger of Dawuwei Global Investment with Jieguang, Tailuosi and Their Affiliates Approved with Undertakings Attached   |
|                                    | Merger between Carrefour Taiwan and Wellcome Taiwan Approved with Undertakings Attached  |
|                                    | TDK and Its Subsidiary MPT and NHK Spring in Violation of Fair Trade Law by Exchanging Information to Prevent Competition  |
|                                    | Xinxin Natural Gas Enterprise Co. in Violation of Fair Trade Law by Using Deceptive Means to Sell Gas Safety Equipment   |
|                                    | Fu Hui Construction in Violation of Fair Trade Law by Posting False Advertisements to Market the “Fu Hui Chang An” Housing Project   |
|                                    | MKD in Violation of Multi-level Marketing Supervision Act by Failing to Handle Participant Withdrawal and Refunding According to Statutory Calculation Approaches after Contract Termination |
| <b>FTC Statistics</b>              | Statistics on Complaint Cases  |
| <b>FTC Activities</b>              | FTC Activities in January and February 2021  |
| <b>FTC International Exchanges</b> | FTC International Exchanges in January and February 2021   |

### **Merger of Dawuwei Global Investment with Jieguang, Tailuosi and Their Affiliates Approved with Undertakings Attached**

The FTC decided at the 1,513th Commissioners’ Meeting on Nov. 4, 2020 to cite Paragraph 2 of Article 13 of the Fair Trade Law and approve the intended merger of Dawuwei Global Investment Holding Co., Ltd. (hereinafter referred to as the applicant) with Jieguang Co., Ltd. (hereinafter referred to as Jieguang) and its affiliates, and Tailuosi Co., Ltd. (hereinafter referred to as Tailuosi) and its affiliates by acquiring 65% of the shares of Singapore company Danami Vision Pte. Ltd. through Da Da Digital Convergence Co., Ltd. However, to ensure that the overall economic benefit would be greater than the disadvantages from competition restraints, undertakings were attached to the approval.

The case involved the merger of eight cable TV service providers [including South Taoyuan, Beishi, Xinhe and Qunjian, all affiliates of the Jieguang Group], Ji Yuan, an affiliate of the Tailuosi Group, and Dafeng, an affiliate of the Dafeng Group which was controlled by the

applicant, Taiwan Digital Broadband and New Kaohsiung. However, the aforementioned services operated in different areas and were not direct competitors. Meanwhile, the three fixed broadband networks involved (including Taiwan Broadband Communications, Da Da Broadband and Kaohsiung Da Da New Broadband) had limited market power and they had to face competition from Chunghwa Telecom and other fixed broadband network operators. Therefore, the merger had no significant influence on the shares of the current cable TV service management market and fixed broadband service market, market concentration and market structure. At the same time, the unilateral and coordinated effects of the horizontal merger of the Dafeng Group, Jieguang Group and Tailuosi Group in the multiple system management market would be small. The five major multiple system operators would continue to compete. The merger would not cause competition to stop and it would also allow the merging parties to acquire channels at cheaper prices, improve their management efficiency, bring in new channels and locally produced and broadcasted programs, cooperate with OTT service providers (including local ones), bring in FTTH G-PON network frameworks, offer a variety of preferential subscription fee packages, and increase the value-added applications for households and smart communities. All these would enrich the diversity of video content and network services.

However, the fact that the four cable TV service operators under the Jieguang Group and the Jiyuan cable TV service operator under the Tailuosi Group commissioned channel agents to make purchases on their behalf seemed to create an upstream downstream consolidation. It could have prompted the commissioned channel agents to adopt reciprocal conditions to negotiate “channel licensing” with other channel agents that were multiple system operators, and competition in the cable TV service management market might be indirectly affected. In addition, the channel price negotiation capability of the applicant after the merger would be heightened. Therefore, the abuse of market power against channel suppliers with weaker price negotiation capability or channel agents would be a concern.

Along with the development of digital convergence and cross-platform service competition, the aforementioned concerns might also reduce the power of the merging parties in the multiple system management market. Therefore, the attachment of undertakings for conduct control at the present stage was necessary to ensure that the overall economic benefit could outweigh the disadvantages from competition restraints. Hence, in citing Paragraph 2 of Article 13 of the Fair Trade Law, the FTC attached the following undertakings:

1. After the current channel-purchasing contracts expire (on Jan. 1, 2022), the merging parties and the companies they control and their affiliates will not be able to commission the channel agents to make channel purchases again. The merging parties themselves or their affiliates will have to negotiate and sign contracts with channel program suppliers or channel agents.
2. During the three years after receiving the merger decision, the applicant will be required to

present the following information to the FTC for reference before Jul. 1 each year:

- (1) The condition of channel purchases made by the merging parties and the companies they control and their affiliates and channel-licensing documents signed with channel program suppliers or channel agents.
- (2) The condition of cross-district broadcasting of channel programs managed by the merging parties and companies under their control and their affiliates (including the areas receiving the broadcasts and actual numbers of subscribers).
- (3) Concrete measures taken to provide consumers with better and more diverse video content and services and the results achieved, such as the introduction of new channel programs, locally produced and broadcasted programs and cooperation with OTT service providers (including local businesses, and self-selected channel combination packages allowed, etc.).
- (4) A report on the achievements advantageous to the overall economic benefit (including but not limited to the measures taken) to ensure that the overall economic benefit as specified in the aforementioned undertakings is greater than the disadvantages from competition restraints.

## **Merger between Carrefour Taiwan and Wellcome Taiwan Approved with Undertakings Attached**

The FTC decided at the 1,518th Commissioners' Meeting on Dec. 9, 2020 to cite Paragraph 2 of Article 13 of the Fair Trade Law and approve the intended merger of Presicarre Corporation (hereinafter referred to Carrefour Taiwan) with Wellcome Taiwan Co., Ltd. (hereinafter referred to as Wellcome Taiwan) by acquiring 100% of the outstanding shares of Wellcome Taiwan. However, to ensure that the overall economic benefit would be greater than the disadvantages from competition restraints, undertakings were attached to the approval.

To review this merger case, besides sending written requests to several general merchandise retailing businesses to obtain their opinions, the FTC also held a seminar in September. Carrefour Taiwan and Wellcome Taiwan were invited to present their reports on the merger. Scholars and specialists, related businesses and the competent authority of consumer protection, consumer protection groups, upstream suppliers and related trade associations, as well as competitors were also present to discuss and offer their opinions with regard to the definition of the relevant market in this merger case, assessment of the shares of Carrefour held by Uni-President Group, and the results of likely competition restraints.

The merger was a horizontal one between a hypermarket enterprise and a supermarket company. With the factors associated with a horizontal merger having been taken into consideration, the FTC concluded that the shares of the relevant market, market structure and the change in market concentration after the merger would not substantially weaken market competition. The merging parties could increase the scale of their purchases, reduce product costs, consolidate sales networks, develop online business and improve logistical efficiency. In turn, consumers would be able to enjoy cheaper prices and more convenient services.

Uni-President Enterprises Corporation, a supplier of Carrefour Taiwan, and the group to which it belonged together held 40% of the shares of Carrefour Taiwan. Therefore, "differential treatment without justification" could have existed in their product supply conditions. Meanwhile, the price negotiation capability of Carrefour Taiwan and Wellcome Taiwan would increase after the merger. Small and medium suppliers with weaker price negotiation power could be forced to withdraw from the retail outlets of the merging parties and they would have to put in a lot of effort to switch to other retail businesses. They might even go out of business. As a consequence, product diversity would decrease and the interests of consumers would be affected. In order to eliminate the aforesaid concerns and ensure that the overall benefit of the merger would outweigh the disadvantages from competition restraints, the FTC therefore cited Paragraph 2 of Article 13 of the Fair Trade Law and attached the following undertakings:

1. If a small number of shareholders of Carrefour Taiwan are also the company's suppliers or potential suppliers, the transactions between Carrefour Taiwan and such shareholders have to be normal transactions. Carrefour Taiwan may not agree or promise to give such

shareholders certain transaction terms (including but not limited to additional expenses) when making transactions or conspicuously give such shareholders preferential treatment compared to other suppliers of certain status.

2. During the three years after the merger is completed, Carrefour Taiwan is required to keep implementing the special projects established for small and medium suppliers that provide less than NT\$1 million of goods on average each month. Carrefour Taiwan must also make sure that if such special projects are revised or replaced, the results will not be disadvantageous to small and medium suppliers.
3. During the three years after the merger is completed, Carrefour Taiwan may not terminate the business relations with any small and medium suppliers or remove any of them from the supplier list without justifiable causes or reasonable notification in advance. If such termination or removal happens, Carrefour Taiwan is required to indicate the reasons and also allow the small or medium suppliers so affected to have the opportunity to request that a high-ranking manager or Carrefour Taiwan review the termination or removal decision.
4. During the three years after the merger is completed, Carrefour Taiwan is required to present the following information to the FTC for reference before Apr. 1 each year:
  - (1) Photocopies of existing supply contracts signed with the aforementioned small number of shareholders or their successors (including any attachments or amendments) and the transaction terms established with such shareholders (including but not limited to additional expenses).
  - (2) An annual report on the number of small and medium suppliers and the total amount of products purchased from such small and medium suppliers.

## **TDK and Its Subsidiary MPT and NHK Spring in Violation of Fair Trade Law by Exchanging Information to Prevent Competition**

The FTC decided at the 1,514th Commissioners' Meeting on Nov. 11, 2020 that TDK Corporation (hereinafter referred to as TDK), its subsidiary Thai company Magnecomp Precision Technology Public Co., Ltd. (hereinafter referred to as MPT) and NHK Spring Co., Ltd. (hereinafter referred to as NHK Spring) had violated the regulation against concerted actions set forth in Paragraph 1 of Article 15 of the Fair Trade Law by contacting each other and exchanging sensitive information regarding HDD suspension assembly products to prevent price competition, maintain or expand market shares together, and exclude competition. The conduct could have affected the supply-demand function in the domestic relevant market. The FTC imposed administrative fines of NT\$159.09 million (the same currency applies hereinafter), 159.09 million and 285.55 million, respectively, on TDK, MPT and NHK Spring. The fines totaled 603.73 million.

The HDD suspension assembly is an HDD component. The function is to keep the HDD magnetic head suspended over the disk to facilitate data reading. Until 2016, there were only four HDD suspension assembly suppliers across the globe, namely, the TDK Group (including MPT), NHK Spring Group (including NHK Spring), Hutchinson Technology Inc. and Suncall Corporation. The HDD suspension assembly products they produced were supplied to HDD makers around the world. Besides the ones directly sold by retailers to end users, the remaining HDD suspension assembly products imported into the country were used to assemble desktop computers, notebook computers and monitoring cameras. As the amount of HDD suspension assembly products imported reached 10 billion each year, any concerted action adopted by HDD suspension assembly suppliers to gain price and quantity control and exclude competition was bound to push up the prices of HDD products. Besides ending up making end users pay higher prices, their actions would also have had an effect on the export competitiveness of domestic computer businesses.

The FTC's investigation indicated that the HDD suspension assembly market was an oligopolistic one. When needing to make purchases, most HDD businesses would make price inquiries with the TDK Group or NHK Spring Group, which would exchange sensitive information regarding prices and quantities based on the intention to maintain prices or reduce the margin of price reduction. If they found out that competitors were intending to lower prices, they would also discuss adopting countermeasures to protect their market shares and interests. In other words, both the TDK Group and NHK Spring Group had the incentive to engage in concerted actions. Another finding showed that the TDK Group and its competitor NHK Spring Group contacted each other and, between May 2008 and April 2016, the HDD suspension assembly business decision makers or concerned personnel of TDK and NHK Spring or of MPT, TDK's subsidiary, and NHK Spring continued to call, meet or email each other to exchange sensitive information about prices and quantities in order to revise price quotations to maintain

or expand each other's market shares as well as exclude competition. Such a concerted action was able to affect the supply demand function in the domestic relevant market. It was in violation of the regulation against concerted actions set forth in Paragraph 1 of Article 15 of the Fair Trade Law.

The FTC has established the Regulations for Calculation of Administrative Fines for Serious Violations of Articles 9 and 15 of the Fair Trade Law. After taking into consideration that the concerted action in this case had caused high-level harm to trading order in the domestic market, that the unlawful act had lasted eight long years, and that the total sales of the TDK Group and NHK Group in the domestic market had exceeded 100 million each, the FTC concluded that it was a serious violation. Therefore, according to the seriousness of violation, the profits obtained from the unlawful conduct and the applicability of the regulations specified in Articles 4 to 7 of the aforementioned calculation regulations, the FTC cited Paragraph 2 of Article 40 of the Fair Trade Law and imposed administrative fines on TDK, MPT and NHK Spring, respectively.

## **Xinxin Natural Gas Enterprise Co. in Violation of Fair Trade Law by Using Deceptive Means to Sell Gas Safety Equipment**

The FTC decided at the 1,515th Commissioners' Meeting on Nov. 18, 2020 that Xinxin Natural Gas Enterprise Co., a vendor of gas safety equipment, had violated Article 25 of the Fair Trade Law by distributing gas safety inspection service notices and using employee identity passes and uniforms that resembled the ones used by the local natural gas provider while concealing the fact that it was a gas safety equipment vendor in order to push the company's products. The deceptive conduct misled consumers. Therefore, the FTC imposed an administrative fine of NT\$100,000 on the company.

Earlier on Jun. 5, 2019, the FTC decided at the 1,439th Commissioners' Meeting to sanction Xinxin Natural Gas Enterprise Co., but the case involved criminal fraud and Paragraph 1 of Article 26 of the Administrative Penalty Act was applicable. Therefore, the FTC only ordered the company to cease the unlawful act but did not impose a fine, and transferred the person in charge and two sales representatives to be investigated by a judicial agency. After the New Taipei District Prosecutors Office informed the FTC in writing that the three people had not been indicted, the FTC then imposed the administrative fine on Xinxin Natural Gas Enterprise Co. for adopting the illegitimate practice to sell gas safety equipment.

The FTC would like to remind consumers that when a person knocks on the door to push gas safety equipment, they must find out the business the person really represents and the true intention of the visit. They should also evaluate if they really need the product that the visitor tries to sell them in order to safeguard their interests. The FTC has always valued trading order in the gas safety equipment market. If any business is found to have engaged in deceptive conduct or to have concealed its identity or intention, the FTC will impose a heavy sanction on it.

## **Fu Hui Construction in Violation of Fair Trade Law by Posting False Advertisements to Market the “Fu Hui Chang An” Housing Project**

The FTC decided at the 1,506th Commissioners’ Meeting on Sep. 16, 2020 that Fu Hui (transliteration) Construction Co., Ltd. (hereinafter referred to as Fu Hui Construction) had violated Article 21 (1) of the Fair Trade Law by using dotted lines to mark the machine room space as part of the interior on the Building A (2-9F) and Building B (2-9F) floor plans posted on the company’s website to market the “Fu Hui Chang An” housing project. The practice was a false and misleading representation with regard to content and use of product and could also affect transaction decisions. Therefore, the FTC imposed an administrative fine of NT\$500,000 on the company.

When marketing the “Fu Hui Chang An” housing project, Fu Hui Construction posted on its website the Building A (2-9F) and Building B (2-9F) floor plans on which dotted lines were applied to mark the machine room space as part of the interior. The overall advertisement gave the impression that the machine room space could be used legally as indicated. Nonetheless, according to the opinion of the New Taipei City Government, if Fu Hui Construction changed the machine room space to be part of the interior without acquiring the approval of the city government, it would be in violation of Paragraph 1 of Article 77 and Paragraph 2 of Article 73 of the Building Act and the competent authority would request that the owner or user of the building restore the change to its original condition or apply for approval according to related regulations.

Since the space arrangement in the advertisement for the “Fu Hui Chang An” housing project was inconsistent with the floor plans originally approved, trading counterparts would be unable to enjoy the space arrangement indicated in the advertisement. In other words, the representation in the advertisement was inconsistent with the fact. It could therefore have caused the general public to have wrong perceptions about the content and use of the units of the housing project or make wrong decisions. As a result, market competition order would lose its original functions and unfair competition would occur. The company was in violation of Article 21 (1) of the Fair Trade Law.

## **MKD in Violation of Multi-level Marketing Supervision Act by Failing to Handle Participant Withdrawal and Refunding According to Statutory Calculation Approaches after Contract Termination**

The FTC decided at the 1,509th Commissioners' Meeting on Oct. 7, 2020 that Meikeda Limited Liability Company (hereinafter referred to as MKD), a multi-level marketing business, had violated Article 21 (2) of the Multi-level Marketing Supervision Act by failing to handle participant withdrawal and refunding according to statutory calculation approaches after contract termination. Therefore, the FTC imposed an administrative fine of NT\$100,000 on the company.

MKD registered its multi-level marketing operation with the FTC in Nov. 2010 and started to sell food products. On Mar. 10, 2020, an FTC staff member visited the main office of MKD to conduct a business inspection and discovered that the company's contract termination application carried the wording "remittance fee to be deducted from the refund for participants providing photocopies of passbooks not issued by First Commercial Bank" and the company had indeed deducted the remittance fee from the refund for participants who did not have a First Commercial Bank account. However, as the remittance fee was a statutory deduction item, MKD failed to handle participant withdrawal and refunding according to statutory calculation approaches after contract termination. It was in violation of Article 21(2) of the Multi-level Marketing Supervision Act.

## Statistics on Complaint Cases

Complaint cases received are cases in which informers present to the FTC personally signed written (including emails, faxes, etc.) or oral statements (which are filed as records or complaints) that describe concrete evidence of activities suspected of being in violation of the Fair Trade Law or the Multi-level Marketing Supervision Act or personally signed statements transferred from other agencies. Statistics show that the FTC accepted 1,854 complaint cases (77% of the total number of cases) and reviewed 1,991 cases (including 137 cases remaining unclosed at the end of 2019) in 2020. From 2016 to 2020, the FTC processed 8,420 complaint cases in total. (Table 1)

In 2020, the FTC closed 1,815 complaint cases, made sanctions in 13 cases and did not make sanctions in 58 cases. In the five recent years, the FTC closed 8,372 complaint cases, made sanctions in 145 cases, did not make sanctions in 449 cases and decided on administrative disposal in 5 cases. Review was suspended in 7,507 cases due to the involvement of criminal or civil cases or the jurisdiction of other agencies or as a result of procedural inconsistency. (Table 1)

Table 1 Statistics on Complaint Cases Processed in the 5 Recent Years

Unit: Case, %

| Year              | Reported Case Processed Cases | Ratio to Total Number of Cases% | Handling Result |                |                   |                          |                      |                              |                              |
|-------------------|-------------------------------|---------------------------------|-----------------|----------------|-------------------|--------------------------|----------------------|------------------------------|------------------------------|
|                   |                               |                                 | Total           | Sanctions Made | No Sanctions Made | Administrative Disposals | Suspension of Review | Termination of Investigation | Combination with Other Cases |
| Total (2016-2020) | 8,420                         | 73.2                            | 8,372           | 145            | 449               | 5                        | 7,507                | 1                            | 265                          |
| 2016              | 1,587                         | 68.7                            | 1,545           | 42             | 129               | 2                        | 1,327                | 1                            | 44                           |
| 2017              | 1,671                         | 73.0                            | 1,728           | 36             | 104               | 1                        | 1,485                | -                            | 102                          |
| 2018              | 1,802                         | 73.0                            | 1,782           | 35             | 81                | -                        | 1,617                | -                            | 49                           |
| 2019              | 1,506                         | 73.6                            | 1,502           | 19             | 77                | -                        | 1,386                | -                            | 20                           |
| 2020              | 1,854                         | 77.4                            | 1,815           | 13             | 58                | 2                        | 1,692                | -                            | 50                           |

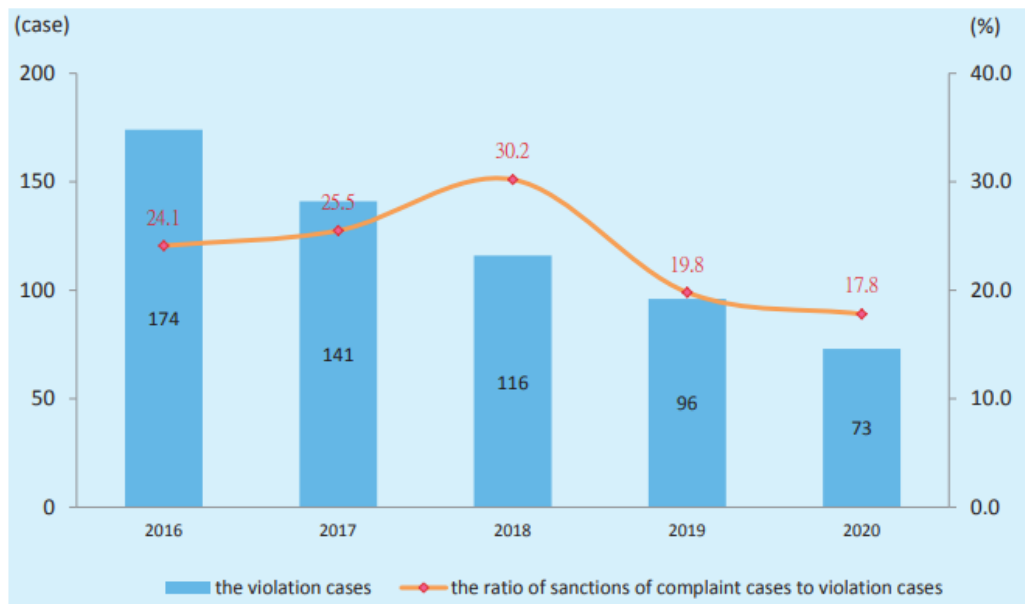
Notes:

1. The total number of cases refers to the aggregate of complaint cases, concerted action approval applications, merger notifications, interpretation applications and cases in which the FTC initiated ex officio investigations.
2. "Administrative disposals" refers to administrative measures adopted by the FTC, including issuing industrial warnings (or corrections) or case warnings (or written requests for improvement) and requesting that related competent authorities take necessary action.
3. "Combination with other cases" means that the same informer has repeatedly reported the same violation or different informers have reported the same violation and the complaints thus filed have been combined and processed together.
4. "Termination of investigation": According to Article 28 added as a result of the amendment to the Fair Trade Act made on Feb. 4, 2015, the FTC may decide to terminate the investigation when the enterprise under investigation for violation of the Fair Trade Act has made the commitment and has also actually implemented concrete measures to cease and correct its unlawful conduct.

Among the complaint cases closed in 2020, after subtracting the ones in which review was suspended because they did not belong to the jurisdiction of the FTC or involved procedural inconsistency and those repeatedly filed, there remained 73 cases (hereinafter referred to as the violation cases) that belonged to the jurisdiction of the FTC. Sanctions were made in 13 cases,

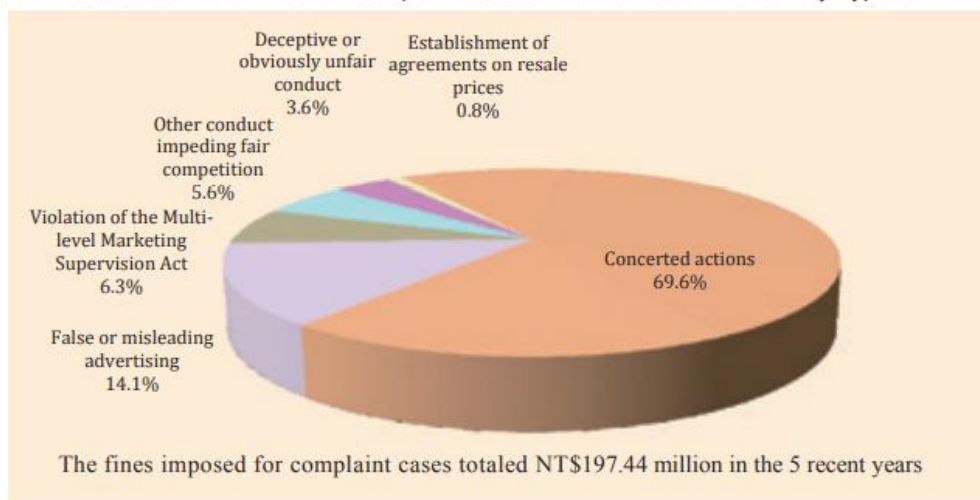
accounting for 17.8% and decreasing by 2% compared to the previous year. In the five recent years, sanctions were made in 145 cases, accounting for 24.2% of the total violation cases. (Figure 1)

Figure 1 Statistics on the Ratio of Sanctions of Complaint Cases to Violation Cases in the 5 Recent Years



Among the complaint cases processed in the five recent years, the FTC issued 149 dispositions. Judged by the type of violation (cases involving two or more unlawful practices calculated repeatedly), 85 cases, about 57% of the total violation cases, associated with false or misleading advertising topped the list, followed by 31 cases, about 21%, involving multi-level marketing. The fines imposed totaled NT\$197.44 million. Those imposed for concerted actions added up to NT\$137.39 million (69.6%), forming the largest proportion, followed by NT\$27.80 million (14.1%) for false or misleading advertising and then NT\$12.35 million (6.3%) for violation of the Multi-level Marketing Supervision Act. (Figure 2)

Figure 2 Statistics on the Fines for Complaint Cases in the 5 Recent Years – by Type of Violation



## FTC Activities in January and February 2021

- ◆ On Feb. 1, the New Chairperson Handover Ceremony was held at the FTC.



1.Outgoing Chairperson Huang Meiying, Handover Supervisor Minister without Portfolio Huang Zhida and New Chairperson Lee May

2.All the Commissioners of the Tenth Fair Trade Commission

## FTC International Exchanges in January and February 2021

- ♦ On Jan. 28, the FTC attended a videoconference entitled “The Advocacy Strategy to Support Healthy Competition after the COVID-19 Pandemic” held by the ICN Advocacy Working Group.
- ♦ On Feb. 23-25, the FTC attended three OECD videoconferences entitled “The Workshop on the Methodology for Market Competition Assessment,” “The OECD Competition Open Day,” and “The Workshop on Gender Equality Competition Policy.”



- 1.The FTC attending OECD videoconference entitled “The Workshop on the Methodology for Market Competition Assessment”
- 2.The FTC attending OECD videoconference entitled “The Workshop on Gender Equality Competition Policy”