

## Fair Trade Commission

### 【FTC Newsletter】

No.101

October, 2021

Publisher: Lee, May

Editor-in-Chief: Hu, Kuang-Yu

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### **Merger between Aon and WTW not Prohibited**

The FTC decided at the 1,544th Commissioners' Meeting on May 19, 2021 to cite Article 13 (1) of the Fair Trade Law and approve the merger between Aon plc (hereinafter referred to as "Aon") and Willis Towers Watson Limited Company (hereinafter referred to as "WTW").

Both international insurance brokers and management consultancy companies, Aon and WTW had set up subsidiaries Aon Taiwan Ltd., Aon Management Consulting Taiwan Ltd., Willis Towers Watson Taiwan Ltd. and Willis Towers Watson Management Consulting Taiwan Ltd. to run related operations. Aon intended to acquire all the shares of WTW through a stock swap and gain control of WTW's management and personnel appointment and dismissal. The condition achieved the filing threshold; therefore, Aon filed a merger notification with the FTC.

The overlapping operations of Aon and WTW in the country included insurance broker services, reinsurance broker services, retirement benefit services, health and benefit consultancy, and human capital consultancy. Regarding the insurance and reinsurance broker services, the FTC

solicited the opinions of the competent authority of the insurance industry, domestic large corporations, property insurance companies and competitors in order to evaluate market share changes before and after the merger and also analyzed the records of both companies' and competitors' participation in the procurement tenders of large corporations and property insurance companies. The results indicated that despite the high degree of substitutability that existed between Aon and WTW, there would be other competitors continuing to give the merging parties pressure after the merger. On top of that, the buyers of insurance broker and reinsurance broker services were all large corporations and insurance companies with a lot of price negotiation experience and countervailing power. They would be able to check and balance the capacity of the merging parties to increase their prices or lower their service quality.

As for the retirement benefit services, health and benefit consultancy, and human capital consultancy, the FTC inquired of the opinions of several current customers of Aon and WTW. They all commented that there were many replacement options in the market. Changing supply sources would not be difficult, and so there were no concerns about competition restraints.

After reviewing the case, the FTC concluded that the merger would not lead to significant disadvantages from competition restraints and, therefore, approved the merger by citing Article 13 (1) of the Fair Trade Law.

### **Concerted Action of UNI Air, Mandarin Airlines and Far Eastern Air in Violation of the Fair Trade Law**

The FTC launched an ex officio investigation into the joint decision made by UNI Air, Mandarin Airlines and Far Eastern Air with regard to prices of plane tickets for domestic air routes during their meetings in 2019. At the 1,548th Commissioners' Meeting on Jun. 16, 2021, the FTC concluded that the practice of UNI Air, Mandarin Airlines and Far Eastern Air to negotiate prices of plane tickets for domestic air routes was in violation of Article 15 (1) of the Fair Trade Law and therefore imposed administrative fines of NT\$1.6 million, NT\$0.95 million and NT\$0.85 million on UNI Air, Mandarin Airlines and Far Eastern Air, respectively.

Traveling by air is more expensive than taking other means of transportation, but it is faster and therefore often the top choice of people coming and going between the main island and offshore islands like Penghu and Kinmen and between Taipei and Taitung. In 2019, UNI Air, Mandarin Airlines and Far Eastern Air held meetings during which they discussed and achieved the consensus to "maintain ticket prices starting in April 2019" and "keep group ticket prices in the third quarter of 2019 at least at the same level as in the previous year." Although the three companies claimed the decisions had been promises made without serious thinking or answers

given to go along with the others and the actual prices had to be determined in accordance with market supply and demand, the investigation of the FTC indicated that the representatives of all three companies were all personnel with the responsibility to plan ticket prices or make price decisions. Even if they had only given oral agreements or expressed support to go along with the others during price discussions, it was enough to cause the companies to head in the direction of “preventing the lowering of prices” of domestic plane tickets or “maintaining” price levels in their price decision in 2019. As a consequence, the domestic airline companies all ended up maintaining ticket prices or not lowering ticket prices.

In 2019, the seven air routes involved in this case, namely, Taipei, Taichung and Kaohsiung to Penghu, Taipei, Taichung and Kaohsiung to Kinmen, and Taipei to Taitung, were either operated by UNI Air, Mandarin Airlines and Far Eastern Air or by two of them. In other words, the aggregate market share of the three airline companies was 100%. That means that when the three companies discussed ticket prices as mentioned above and achieved a consensus, consumers became unable to benefit from competition between the three enterprises and obtain more preferential prices. For this reason, the mutual understanding established by the three airline companies was already able to affect the supply-demand function in the market associated with these air routes. It was in violation of the regulation against concerted actions set forth in the Fair Trade Law.

The FTC would like to point out that although companies in the profession may have to meet or get together because of business needs, making price plans through discussions during such gatherings or jointly deciding the future management direction of the industry is likely to touch upon the concerted action regulations in the Fair Trade Law. Therefore, even if people are under the influence of alcohol during such gatherings, they should exercise control in order not to break the law.

## **Concerted Action of TTY Biopharm and Lotus Pharmaceutical in violation of the Fair Trade Law**

The FTC received complaints that TTY Biopharm, Otsuka Pharmaceutical and Lotus Pharmaceutical had engaged in a concerted action when marketing colon cancer drugs. At the 1,542nd Commissioners' Meeting on May 11, 2021, the FTC decided that TTY Biopharm and Lotus Pharmaceutical had violated the regulation against concerted actions set forth in Article 15 (1) of the Fair Trade Law.

The Ufur capsules of TTY Biopharm, the UFT capsules of Otsuka Pharmaceutical and the Furil capsules of Lotus Pharmaceutical were all prescription drugs covered by the National Health Insurance. They were made with the same ingredients in the same dosage form and in the same dose. Besides selling its own Ufur capsules, TTY Biopharm had also signed exclusive distributor agreements with Otsuka Pharmaceutical and Lotus Pharmaceutical to sell their UFT capsules and Furil capsules. The agreements with Otsuka Pharmaceutical made TTY Biopharm a normal vertical distributor and agent and the relationship was not in violation of the regulation against concerted actions set forth in the Fair Trade Law. However, the agreements signed with Lotus Pharmaceutical appeared to be for delegation of distributorship on the surface; in reality, the investigation of the FTC indicated that it was the result of a mutual understanding between the two companies to prevent Furil capsules from being sold in the market.

The drugs produced by TTY Biopharm and Lotus Pharmaceutical were both generic drugs with substitutability for each other. Both companies were competitors at the same production and marketing stage. They signed agreements respectively in 2009, 2013 and 2018 and it was stipulated that TTY Biopharm was required to pay Lotus Pharmaceutical a certain amount of licensing fee on a regular basis in order to obtain the exclusive distributorship to sell the Furil capsules of Lotus Pharmaceutical. At the same time, the agreements also prohibited Lotus Pharmaceutical from selling the drug on its own or through others. Acting according to the agreements, TTY Biopharm paid Lotus Pharmaceutical a licensing fee each year but never placed any orders to purchase Furil capsules or sold the drug to hospitals. As a result, the Furil capsules of Lotus Pharmaceutical were never sold for a number of years. In other words, TTY Biopharm and Lotus Pharmaceutical established the exclusive distributor agreements to restrict each other's business activities. Both companies achieved the mutual understanding to prevent Furil capsules from being sold in the market. It was a concerted action and the FTC therefore imposed administrative fines on the two companies.

Under the National Health Insurance system, the payment standards and price adjustment procedures for drugs covered by National Health Insurance are subject to related regulations. In principle, the Fair Trade Law does not apply. Nevertheless, if competing pharmaceuticals take advantage of the distribution and cooperation relations, which often existed, and sign distribution agreements to engage in a concerted action and obstruct businesses from entering the market, they are in violation of the Fair Trade Law. There should have been space for

competition between the Ufur capsules of TTY Biopharm and the Furil capsules of Lotus Pharmaceutical in the relevant market, but Lotus Pharmaceutical was restricted by the exclusive distributor agreement and could not compete in the market for many years. In the end, TTY Biopharm was able to take over and claim around 80% of the market. Besides restricting competition between the two firms, the concerted action also caused harm to the National Health Insurance system and deprived medical institutions and patients of the benefit of enjoying price cuts that would have taken place if Furil capsules had entered the market. It also reduced the options of physicians when deciding on drugs. Even more, it was disadvantageous to the adjustment of prices of drugs covered by the National Health Insurance and had an effect on the supply-demand function in the colon cancer drug market. After reviewing the case, the FTC imposed administrative fines of NT\$220 million and NT\$65 million on TTY Biopharm and Lotus Pharmaceutical, respectively.

The FTC does not forbid cooperation between businesses to market products and also understands that the salespeople of pharmaceuticals require expertise. Due to the medical systems, insurance regulations and the differences in the various countries, it is not easy to dig deep into the drug marketing channels in different countries. Hence, signing agreements for distribution cooperation is a common phenomenon or characteristic in the pharmaceutical industry, and there is nothing wrong with it. Nevertheless, if distribution cooperation is merely a façade for companies to sign agreements to exchange benefits, make the party receiving benefits refrain from entering the market to compete, and create an impact on the supply-demand function in the drug market of concern, it is a violation of Fair Trade Law. Companies must therefore be careful.

## **Shunsheng Enterprise Co., Ltd. in Violation of the Fair Trade Law for Adopting Deceptive Means to Market Gas Antivibrators Bottle Shock Absorbers**

The FTC decided at the 1,546th Commissioners' Meeting on Jun. 2, 2021 that Shunsheng Enterprise Co., Ltd. had violated Article 25 of the Fair Trade Law for adopting deceptive and obviously unfair practices of holding disaster prevention presentations and raffle activities to attract people to attend, but concealing its identity and product prices, and sending its salespeople to follow people home to install and sell gas antivibrators through inappropriate means. The FTC ordered the company to immediately cease the unlawful act and also imposed on it an administrative fine of NT\$2 million.

Has it ever happened that an elder in your family was home alone and someone knocked on the door to hand out a presentation flyer and raffle tickets? Normally, the younger ones in the household go to work in the daytime and older people stay home alone. The employees of Shunsheng Enterprise Co., Ltd. rang the doorbell and handed out raffle tickets to attract people to go to the square or a vacant lot to attend a presentation without telling them that they were selling gas safety devices. People were misled to believe that it was a government agency presenting information about actions to take during earthquakes, fires or gas explosions. During the presentation, the employees of Shunsheng Enterprise Co., Ltd. also claimed people could get gas antivibrators for free.

After the presentation, the salespeople followed people home, installed Gas Antivibrators, and then told the people they had to pay a relatively large amount of money for the safety device. Lacking experience, the older people were afraid of gas leaks or were scared that the salespeople were already in their homes and refused to leave after installing the device, so they were worried about their personal safety. As a result, they paid the money. On the one hand, the salespeople of Shunsheng Enterprise Co., Ltd. concealed important transaction information. On the other hand, they pressured the free will of the people. In the end, either out of impulse or helplessness, these people bought the gas antivibrators.

The FTC would like to remind consumers to find out the organization the visitors trying to sell gas safety equipment truly represent. They should also assess whether they really need the product being marketed and have it installed in order to protect their own interests. The FTC has always valued the trading order in the gas safety equipment market. Once the FTC has obtained evidence of any business engaging in deception or concealment, it will impose a severe sanction.

## **Hsin Tang Cheng Cable TV Posted False Advertisements in Violation of the Fair Trade Law**

The FTC decided at the 1,525th Commissioners' Meeting on Jan. 27, 2021 that the service advertisement for the "HD99 high definition package" (hereinafter referred to as "the advertisement in question") distributed by Hsin Tang Cheng Cable TV Co., Ltd. (hereinafter referred to as "Hsin Tang Cheng Cable TV") in March 2019 and presented as a "payment slip" was intended to mislead people into thinking the advertisement in question was a cable TV service payment slip; plus the advertisement content did not disclose the restrictions on the use of the gift vouchers given during the promotional activity. It was a false and misleading representation in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 of the same article was applicable mutatis mutandis. The FTC imposed an administrative fine of NT\$50,000 on Hsin Tang Cheng Cable TV.

The way the advertisement in question was presented could have easily misled subscribers to perceive the advertisement as an unpaid cable TV service payment slip, so they made the payment and, as a result, subscribed to the package. The presentation helped the company achieve the purpose of affecting transaction decisions. Although there was a text in smaller print to indicate that the advertisement in question was a promotion flyer, the disclosure presented in the disproportionate font was not sufficiently conspicuous to make viewers know it was a promotion flyer. As a consequence, they made the wrong transaction decisions. Meanwhile, the advertisement in question also carried the wording "After payment, our company will send you the 'gift collection serial number' in a text message," but nothing was said about the restrictions on the use of the voucher. Users had to pay and wait for the text message to find out the restrictions. They could not evaluate the actual value and restrictions according to the information presented in the advertisement. Obviously, the presentation caused people to have wrong perceptions and make wrong decisions. Therefore, the FTC concluded that the advertisement in question was a false and misleading representation in violation of Paragraph 4 of Article 21 of the Fair Trade Law and Paragraph 1 of the same article was applicable mutatis mutandis.

## **Tiandan International in Violation of the Multi-level Marketing Supervision Act**

The FTC decided at the 1,531st Commissioners' Meeting on Mar. 17, 2021 to impose an administrative fine of NT\$400,000 on Tiandan International Co., Ltd. (hereinafter referred to as "Tiandan International") for its violation of Paragraph 2 of Article 20 and Paragraph 1 of Article 23 of the Multi-level Marketing Supervision Act. In addition, another administrative fine of NT\$200,000 was also imposed on the company's participant Mr. A for his violation of Paragraph 1 of Article 23 of the Multi-level Marketing Supervision Act.

In multi-level marketing, participants introduce others to join the scheme and establish a multi-level organization to sell products or services. To ensure that participants can have enough time to consider whether they really want to join a multi-level marketing business, it is stipulated in the Multi-level Marketing Supervision Act that if participants make the decision to terminate the contract within 30 days after joining a multi-level marketing business, they can return the products and get back the money and the admission fee. There is also a regulation in the same Law clearly specifying that multi-level marketing businesses may not use any excuse to refuse contract termination and return of products.

In this case, some downline participants applied for contract termination within 30 days after joining the company, but Tiandan International refused to return the admission fee. It was in violation of related regulations. In addition, Tiandan International refused to give the refund on the grounds that the downline participants could not return the products when they made the decision to terminate the contract. However, the FTC's investigation showed that the up-line participant of the aforesaid participants had made the agreement to convert the products into mall currency at the time of admission. As a result, the downline participants had no products to return. Tiandan International was perfectly aware of that, but the company still insisted that the downline participants had to present the products to get the refund. The practice was not different from obstruction of product return. By doing so, the company violated related regulations.

## An Overview of the Development of Multilevel Marketing Businesses in 2020

As the competent authority of the Multi-level Marketing Supervision Act, the FTC conducts a survey on the development of registered multi-level marketing businesses every year in order to enhance its assistance for and administration of multi-level marketing businesses and to have a firm grasp of the latest developments in multilevel marketing businesses to ensure that the industry can move ahead in the right direction and in a positive way. The survey performed this time indicated that the sales of multi-level marketing businesses and the total amount of commissions (bonuses) issued in 2020 had increased steadily compared to the previous year.

After those businesses that had not yet begun operation and the ones that had already stopped or suspended operation were deducted, the survey was carried out on the 314 businesses remaining in operation in 2020. The following is a summary of the survey results:

- (1) The overall sales were larger than in the previous year. However, the business scales of the multi-level operations remained rather different:
  1. The sales of the 314 multi-level businesses totaled NT\$98.009 billion in 2020, increasing by NT\$4.468 billion compared to NT\$93.541 billion in 2019. The growth rate was 4.78%.
  2. There were 22 businesses with sales achieving over NT\$1 billion and their sales totaled NT\$73.788 billion, accounting for 75.29% of the total sales of multi-level marketing businesses.
  3. 62 businesses had sales of over NT\$100 million but less than 1 billion. Their sales totaled NT\$19.412 billion, accounting for 19.80% of the total sales of multi-level marketing businesses.
  4. The remaining 230 businesses all took in less than NT\$100 million and their sales totaled NT\$4.809 billion, accounting for 4.91% of the total sales of multi-level marketing businesses.

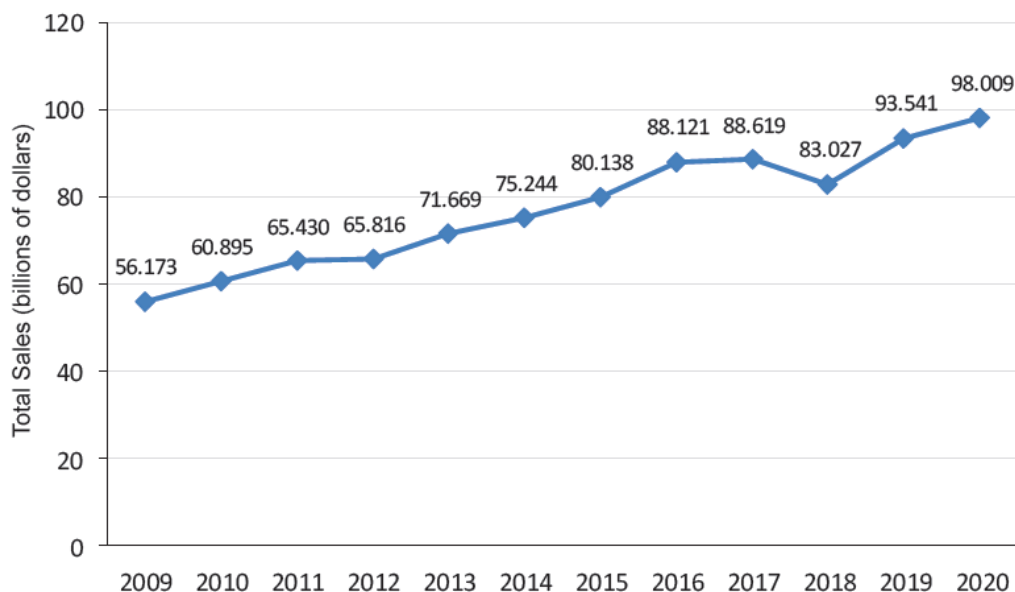


Fig.1 Total Sales of Multi-level Businesses

(2) The number of participants slightly decreased, and female participants were still the main force in the market:

1. As of the end of 2020, there were 3.4891 million participants. After those joining more than one multi-level marketing business were subtracted, there were 3.4777 million participants, a reduction of 199,400 people compared to the 3.6771 million people at the end of 2019.
2. The ratio of the number of participants to the total population was around 14.76%. In other words, on average 1,476 out of every ten thousand people engaged in multi-level marketing, a slight decline of 0.82% compared to the 15.58% at the end of 2019.
3. In 2020, there were 996,800 new participants and 449,100 participants withdrew from multi-level marketing schemes.
4. Female participants remained the main force in multi-level marketing. There were 2.4858 million female participants in 2020 (71.24% of the total number of participants).

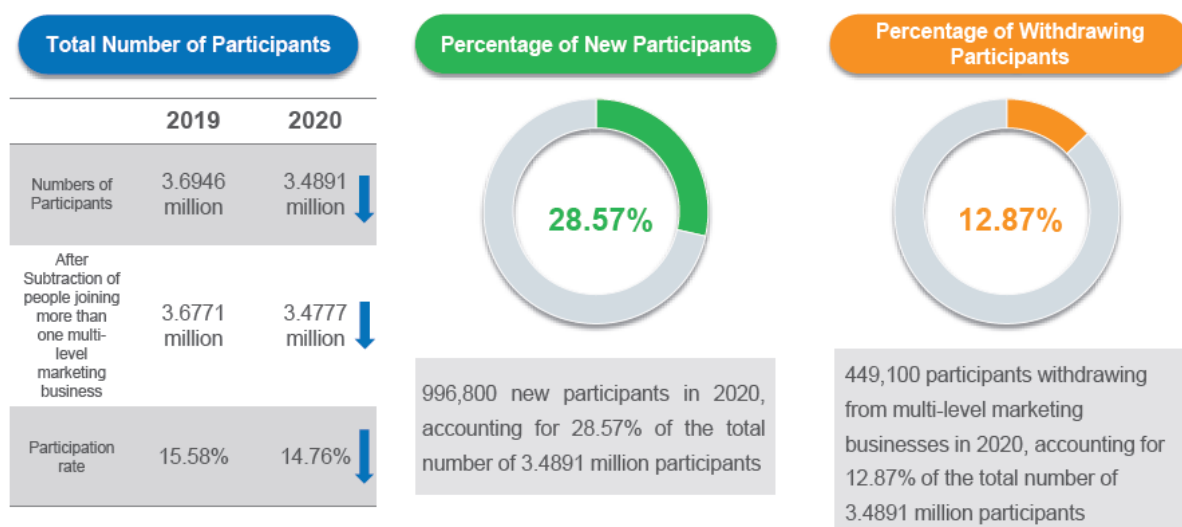


Fig.2 The Number of Participants

(3) Increase in commissions (bonuses) issued compared to the previous year:

1. In 2020, multi-level marketing businesses paid NT\$43.121 billion in commissions (bonuses), accounting for 44.00% of total sales and increasing by 2.11% compared to the 41.89% of total sales disbursed in 2019.
2. People join multi-level marketing businesses as participants to promote and sell products or services. They may also introduce others to join the scheme and obtain commissions (bonuses) or other economic benefits. However, some participants were merely product users and did not actually engage in multi-level marketing. In 2020, 956,000 participants, 27.40% of the total number of participants, collected commissions (bonuses). 707,100 of them, or 73.94%, were female participants and they collected NT\$29.949 billion, or 69.45%.

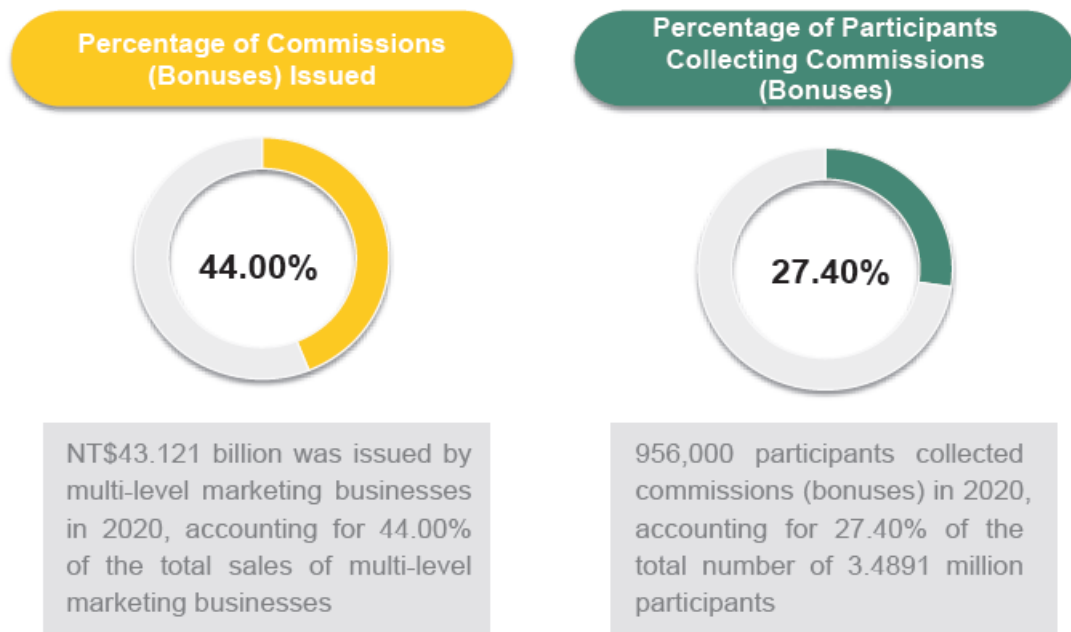


Fig.3 Commissions (bonuses) Issued

(4) Nutritional foods remained the best-selling multi-level marketing products:

In 2020, nutritional foods remained the best-selling multi-level marketing products and their sales totaled NT\$63.719 billion, or 65.01% of the total sales, followed by sales of NT\$17.004, or 17.35% of total sales, of beauty products.



Fig.4 Percentages of Different Types of Multi-level Marketing Products

(5) Growing prevalence of online marketing:

198 businesses adopted online marketing in 2020, accounting for 63.06% of the total number of businesses, a bit higher than the 59.28% in 2019. Among them, 192 businesses accepted online orders (online shopping), 151 had set up online shopping malls, and 145 businesses did both.

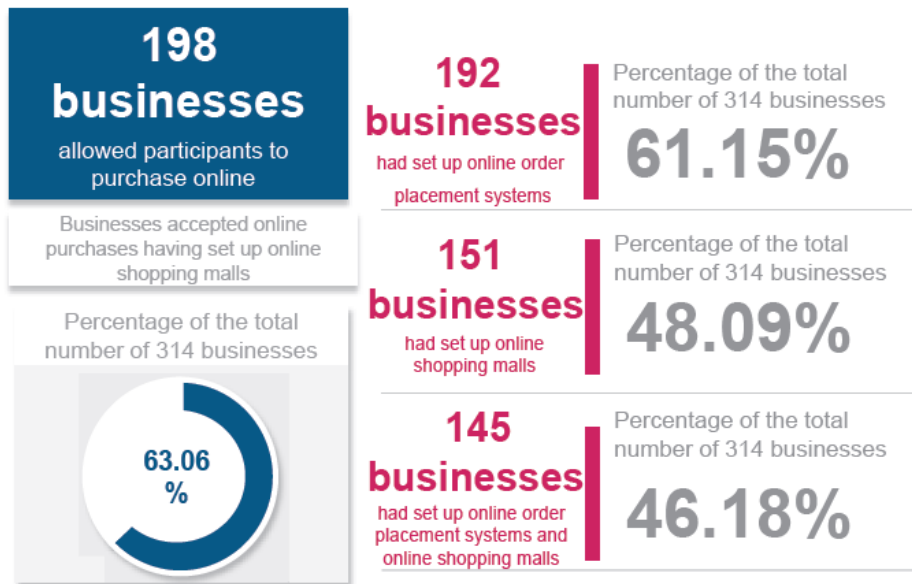


Fig.5 Overview of Online Marketing Adopted by Multi-level Marketing Businesses

(6) Multi-level businesses optimistic about management conditions in the future:

Multi-level marketing businesses worried about recessions, increasingly fierce competition between similar products and sabotage from illegal multi-level marketing businesses; however, 144 businesses, or 45.86% of the total, expected increases in sales in 2021. Meanwhile, 126 businesses, or 40.13%, thought sales in 2021 would be more or less the same as in 2020.

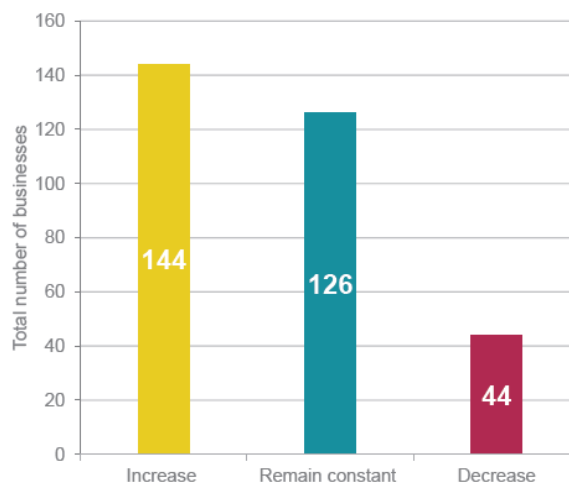


Fig.6 Future Business Expectations of Multi-level Marketing Operations

## **FTC International Exchanges in July and August 2021**

- ◆ On Jul. 15, the FTC attended the “2021 ‘the 23rd’ Chinese Taipei-Eswatini” Economic and Technological Cooperation Videoconference” held by the Ministry of Economic Affairs.
- ◆ On Aug. 16, the FTC had a videoconference with Competition Bureau Canada to talk about the “Contact Center” questionnaire that it had issued.