

Fair Trade Commission

【FTC Newsletter】

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Merger between PCSC and Connection Labs Not Prohibited

The FTC decided at the 1,535th Commissioners' Meeting on Apr. 14, 2021 to cite Article 13 (1) of the Fair Trade Law and not prohibit the merger between President Chain Store Corporation (hereinafter referred to as "PCSC") and Connection Labs Ltd. (hereinafter referred to as "Connection Labs").

PCSC managed the 7-Eleven convenience store chain and Connection Labs operated the "foodomo" food and beverage delivery platform. PCSC intended to merge with Connection Labs and therefore filed a merger notification with the FTC.

The principal business operations of Uni-President Enterprises Corporation, PCSC and Connection Labs were respectively food production, convenience stores and food and beverage delivery platform services. They were dissimilar types of business. Since PCSC and its affiliates sold some of their food and beverages and other products through delivery platforms, the FTC decided to assess the merger from the angles of a vertical merger and conglomerate merger.

Connection Labs only accounted for a rather small share of the food and beverage delivery platform market, whereas there were also many upstream food and beverage businesses. In other words, there would be powerful competitors to contend with PCSC and Connection Labs in the food and beverage delivery platform market and the convenience store market. Moreover, the food and beverages and products available through food and beverage delivery platforms were diverse and substitutability existed. Consumers would have many choices. Hence, this merger would not lead to any concern about vertical foreclosure in the market. Neither could it suddenly cause changes in the structure of each relevant market and the market status of the original players. Since other chain convenience stores also collaborated with other delivery platforms, the merger could even end up making the food and beverage delivery market more competitive.

Based on the above-mentioned reasons, the FTC concluded that the merger would not create any concerns about significant competition restraints and the overall economic benefit would outweigh the disadvantages from the competition restraints. Therefore, the FTC approved the merger by citing Article 13 (1) of the Fair Trade Law.

Merger between FET and APT Approved with Undertakings Attached

The FTC decided at the 1,555th Commissioners' Meeting on Aug. 4, 2021 to approve the intended merger between Far EasTone Telecommunications Co., Ltd. (hereinafter referred to as "FET") and Asia Pacific Telecom Co., Ltd. (hereinafter referred to as "APT") to share the frequency and networks on the 3.5GHz band with undertakings attached in order to ensure the overall economic benefit would be greater than the disadvantages from competition restraints.

APT would put in two ninths of the spectrum bid bond, capital expenditure for the 5G wireless network equipment and cost of network maintenance to be the consideration to obtain the right to use the corresponding network capacity of the band of FET. The condition complied with the merger pattern of "where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or assets of such other enterprise" described in Subparagraph 3 of Article 10 (1) of the Fair Trade Law. At the same time, the merging parties also achieved the merger filing threshold; therefore, a merger notification was filed with the FTC.

The merger was the first-ever frequency and network sharing cooperation case in the country. It was a horizontal merger. Through the merger, APT would share the 3.5GHz band (3340MHz to 3420MHz) and networks with FET to compete in provision of 5G services. As domestic spectrum resources were scarce at the present time, the merger could have led to the economic benefits of promoting sharing of spectrum resources, cutting down management costs, reducing

repeated waste of infrastructure resources, increasing efficiency in the use of limited frequency resources, and improving service quality and the development of related industries.

Besides sharing the aforementioned frequency and networks, the agreement between FET and APT also included FET investing NT\$5 billion to acquire 11.58% of the shares as well as one seat on the board of directors of APT. After evaluating various factors associated with horizontal merger cases and obtaining the opinions of the competent authority of the industry and consumer protection agency, scholars, specialists and competitors, the FTC thought concerted actions involving exchanges of 5G service operation information or joint management could be a concern. If FET participated in the management of APT through the sharing of frequency and networks or its possession of the shares or a seat on the board of directors of APT, the competition pressure that each faced could be reduced. The frequency or intensity of APT's promotional activities might go down. Market competition would decrease. As a consequence, coordinated effects could be created and price competition in the domestic mobile broadband service market would be weakened. What's more, potential competitors could find it hard to enter the market in time due to related regulations in the Telecommunications Management Act and would not be able to increase the pressure to compete among existing telecommunications businesses.

In order to eliminate the above-mentioned concerns and ensure that the overall economic benefit could outweigh the disadvantages from competition restraints, the FTC attached the following undertakings:

1. The merging parties can not engage in joint or entrusted management, cooperation or exchange of information with regard to mobile broadband service charges, terminal equipment funding, marketing activities, or management of customer and billing information by using their agreement on the shared frequency and networks on the 3.5GHz band, their shareholding or their acquisition of a seat on the board of directors.
2. In the five years after the merger, the merging parties are required to provide the FTC with the following information before Jul. 1 each year:
 - (1) The organizational chart, duties and actual work items of the supervisory team, a list of the team members and the company departments to which they have belonged, and the records of all the meetings (including members attending and matters discussed)
 - (2) The records of all the shareholders' meetings and all the board of directors meetings

The FTC did not prohibit the merger but would like to remind the merging parties that the range of cooperation must be limited to the content of the merger notification and they may not engage in joint management or any concerted action in order not to violate the Fair Trade Law.

SNLED Violated Fair Trade Law by Adopting Deceptive Practices to Sell Water Purifiers

The FTC decided at the 1,548th Commissioners' Meeting on Jun. 16, 2021 that SNLED Purification Technology Co., Ltd. (hereinafter referred to as "SNLED") had violated Article 25 of the Fair Trade Law by holding raffles as a pretext to sell water purifiers. The marketing practice was deceptive and obviously unfair conduct able to affect trading order. Therefore, the FTC ordered the company to cease the unlawful act and also imposed on it an administrative fine of NT\$50,000 by citing the first section of Article 42 of the same Law.

In November and December of 2019, SNLED held five raffle activities at a small book fair in Taichung City. Each lottery ticket had two chances to win a prize: the first one was to match the numbers on the ticket with the winning Lotto numbers to purchase a product depending on the number of matches; the second one was the lucky draw for free household appliances. The people attending the activities were full of expectation of winning prizes. However, the company took the opportunity to acquire people's personal information and called to inform them later that they were feedback prize winners entitled to buy a water purifier at the preferential price of NT\$3,800.

The FTC visited some winners and most of them indicated that they would not have purchased the water purifier and had it installed if they had not received the prize-winning notification. SNLED indicated on the lottery ticket that the market price of each water purifier was NT\$32,000. Although the company had never sold any water purifiers at that price, it told the prize winners that they could buy a water purifier for NT\$3,800. Due to information asymmetry, the prize winners made the purchase and had the water purifier installed. The FTC concluded that SNLED had violated Article 25 of the Fair Trade Law for causing people to have wrong expectations about the quality of the water purifier.

Similar cases that the FTC had processed in the past showed that many water purifier businesses held raffle activities to market their products. They took advantage of people's mentality of expecting to be lucky to win prizes and held free lucky draws at sales events. Those companies used the pretext of holding raffles to market their products, and the practice was in violation of the Fair Trade Law. The FTC would like to remind concerned businesses to refrain from breaking the law when marketing products and consumers also have to be more careful when making purchases in order not to be ripped off.

Merger between Chang Chun Plastics and Taiwan Prosperity Chemicals not Prohibited

The FTC decided at the 1,552nd Commissioners' Meeting on Jul. 14, 2021 not to prohibit the merger between Chang Chun Plastics Co., Ltd. (hereinafter referred to as "Chang Chun Plastics") and Taiwan Prosperity Chemical Corporation (hereinafter referred to as "Taiwan Prosperity Chemicals") by citing Article 13 (1) of the Fair Trade Law.

Chang Chun Plastics intended to acquire 100% of the shares of Taiwan Prosperity Chemicals and gain control of its management and personnel appointment and dismissal. The condition complied with the merger-filing threshold; therefore, Chang Chun Plastics filed a merger notification with the FTC.

Chang Chun Plastics and Taiwan Prosperity Chemicals were both midstream basic material suppliers and downstream derivative suppliers in the domestic petrochemical industry. The two companies produced phenol and acetone, both materials needed to manufacture bisphenol A and cyclohexanone. For this reason, the case complied with both horizontal and vertical merger patterns. Since the relevant petrochemical product market had no significant entry barriers and there would still be other domestic and foreign suppliers of phenol and acetone for buyers to choose from, as well as the fact that downstream customers were mostly listed companies with countervailing power, Chang Chun Plastics and Taiwan Prosperity Chemicals would still be restrained by market competition.

The entry conditions in the relevant market would not change because of the merger. Chang Chun Plastics and Taiwan Prosperity Chemicals would continue to face competition from domestic and foreign businesses. It would be hard for them to take measures to create foreclosure and block customers to increase the costs of competitors. In particular, petrochemical product prices were also affected by the supply and demand in the international market. Chang Chun Plastics was expected to step up its productivity to meet the demand in the domestic and overseas markets. The merger could lead to overall economic benefits.

After reviewing the case, the FTC concluded that the overall economic benefit of the merger would be greater than the disadvantages from competition restraints and therefore approved the merger by citing Article 13 (1) of the Fair Trade Law.

Guangming Construction Posted False Advertisements in Violation of the Fair Trade Law

The FTC decided at the 1,531st Commissioners' Meeting on Mar. 17, 2021 that Guangming Construction Co., Ltd. (hereinafter referred to as "Guangming Construction") had violated Article 21 (1) of the Fair Trade Law by instructing its salespeople to show prospective homebuyers the mezzanine design in the model home on the fifth floor of the reception center of the "Humeiyue" housing project located in Neihu District of Taipei City. The design 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\$1 million on the company.

Guangming Construction invested the money to build the housing project and also constructed and decorated a model home on the fifth floor of the reception center to show unspecific prospective homebuyers how a mezzanine could be designed and built. The practice gave prospective buyers the impression that the mezzanine structure was legal. However, according to the opinion of the Taipei City Government, the as-built drawings for the fifth floor did not indicate that there would be a mezzanine. Guangming Construction had designed and built the mezzanine without applying for permission in advance. The conduct was in violation of the "Taipei City Regulations for Handling Illegal Buildings" and related regulations. The representation and symbols posted in the advertisements for the housing project were inconsistent with the fact and could have caused the general public to have wrong perceptions about the content and use of the housing project or make wrong decisions. It was in violation of Article 21 (1) of the Fair Trade Law.

Construction companies often build a model home at the housing project reception center to create the atmosphere to entice prospective homebuyers. However, there are all kinds of tricks or details involved. The FTC would like to remind consumers to be careful when becoming interested in buying a home in order not to end up purchasing a property that is incompliant with building regulations.

Huawei International Furniture and Yu Ai Sheng Furniture Posted False Advertisements in Violation of the Fair Trade Law

The FTC decided at the 1,551st Commissioners' Meeting on Jul. 7, 2021 that Huawei International Furniture Co., Ltd. (hereinafter referred to as "Huawei International Furniture") and Yu Sheng Ai Furniture Development Co., Ltd. (hereinafter referred to as "Yu Sheng Ai Furniture") had violated Article 21 (1) of the Fair Trade Law by posting the claim "Robusta beds—a classic Swiss brand" and Made in Switzerland" on the Huawei Furniture Facebook wall and company website as well as at the retail outlets to market the Robusta beds. The claim was a false and misleading representation with regard to quality and place of origin of product and could also affect transaction decisions. Therefore, the FTC imposed administrative fines of NT\$500,000 on Huawei International Furniture and NT\$200,000 on Yu Ai Sheng Furniture.

The wording "Robusta beds—a classic Swiss Brand" gave consumers the impression that the Robusta mattresses were products of a Swiss brand and had something to do with Switzerland. Nonetheless, according to the mattress maker Yu Ai Sheng Furniture, the series were manufactured and named by the company; plus, the products, production process and materials had nothing to do with the Swiss "Robusta" brand. In other words, the claim was inconsistent with the fact. As the wording of "classic Swiss brand" was associated with product quality and confidence in the brand name, it could cause trading counterparts to have wrong perceptions or make wrong decisions. It was in violation of Article 21 (1) of the Fair Trade Law.

The pictures on the postings on the Facebook wall of Huawei International Furniture carried the wording "Robusta beds—Made in Switzerland". They gave consumers the impression that the mattresses were made in Switzerland. However, they were made by Yu Ai Sheng Furniture locally. The claim could have caused trading counterparts to have wrong perceptions or make wrong decisions. Hence, it was in violation of Article 21 (1) of the Fair Trade Law.

The FTC would like to urge consumers to pay more attention to product information posted by businesses in order to protect their own interests. At the same time, businesses should ensure the authenticity of the content of advertisements in order not to break the law.

Statistics on False Advertising Cases

In order to stimulate purchases, businesses often come up with all kinds of advertisements to attract consumers, including offering promotional prices, and making special offers within a limited period and with limited quantities, while emphasizing their established reputations and pointing out particular product functions, etc. Do such approaches involve false advertising?

Statistics show that the FTC investigated and closed 1,761 cases between January and September this year (2021), including cases the FTC was informed of and cases in which the FTC took the initiative to investigate. There were 863 false advertising cases (accounting for about 49%). After the ones deemed to not belong to the jurisdiction of the FTC, as the investigation results indicated, those in which the FTC suspended reviewing (instigation) due to procedural inconsistency, and cases involving repeated filing of complaints about the same matters were deducted, there remained 62 false advertising cases. Sanctions were made in 29 cases (37 dispositions issued) and no sanctions were given in 33 cases. Meanwhile, between 2017 and the end of September this year (hereinafter referred to as “the five recent years”), 4,974 false advertising cases were processed and closed. Sanctions were made in 173 cases (190 dispositions issued) and no sanctions were given in 230 cases. The review (investigation) was suspended in 4,539 cases, which involved criminal cases, civil cases, the jurisdiction of other agencies, or procedural inconsistency. 32 cases ended up being consolidated and processed with other cases (Table 1).

Table 1 Statistics on Cases Involving False Advertising – by Handling Result

Unit: cases; %

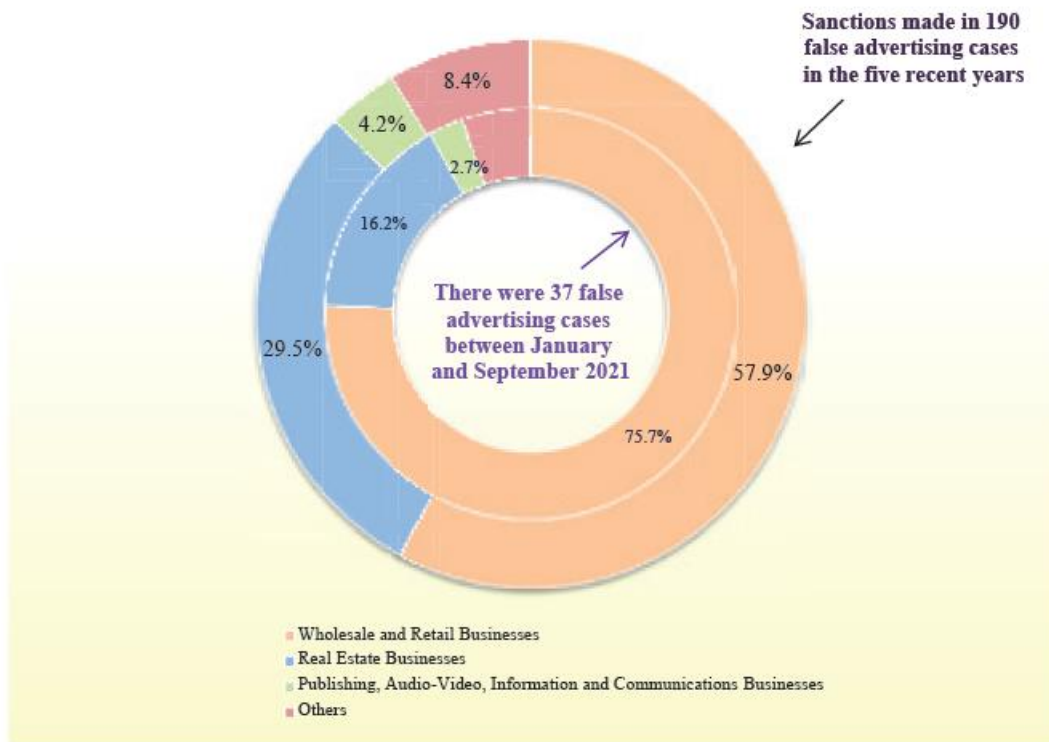
Year	No. of Cases Involving False Advertising	Ratio to Total Cases Processed (%)	Handling Result				
			Sanctions		No. of Cases with Sanctions Given	Suspension of Review (Investigation)	Combination with other cases
			No. of Cases	No. of Dispositions Issued			
Total (2017-Sep. 2021)	4,974	50.8%	173	190	230	4,539	32
2017	964	46.7%	46	46	57	850	11
2018	1,008	47.8%	53	55	54	891	10
2019	973	55.2%	18	24	51	903	1
2020	1,166	55.6%	27	28	35	1,097	7
Jan.-Sep. 2021	863	49.0%	29	37	33	798	3

Note: “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.

The FTC handed down sanctions and issued 71 dispositions between January and September this year. 37 cases, or 52.1%, involved false or misleading advertising. Judged by type of industry, 28 cases, or 75.7%, were related to wholesale and retail businesses, and formed the largest group. In the five recent years, the FTC gave out sanctions and issued dispositions in 440 cases, 190 cases, or 43.2%, of them involved false advertising. Judged by the type of industry,

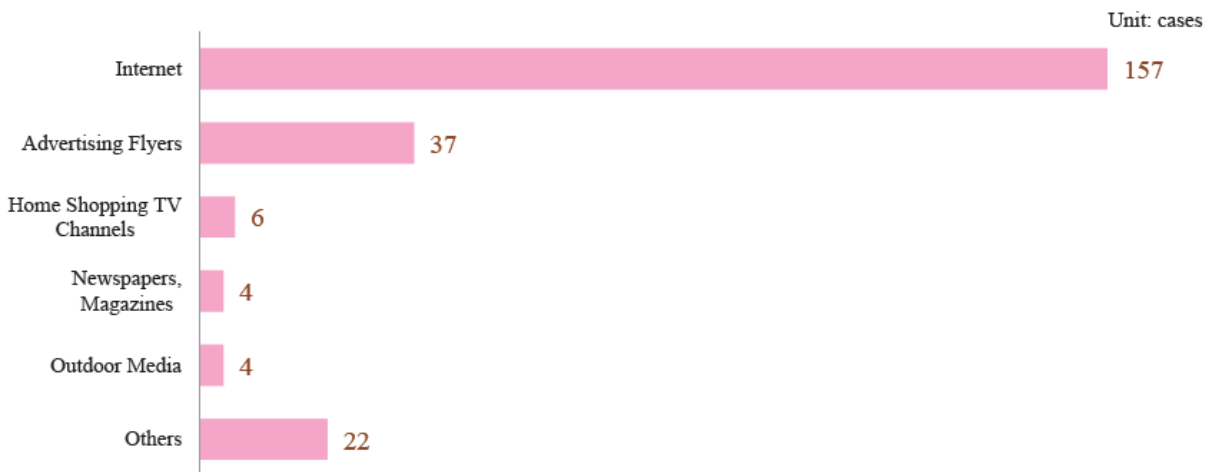
110 cases, or 57.9%, concerned wholesale and retail businesses and topped the list, followed by 56 cases, or 29.5%, involving real estate businesses. The two types totaled 87% (Fig. 1).

Fig.1 Statistics on False Advertising Cases in which Sanctions were made – by Industry



Judged by the type of advertising media indicated in the 190 dispositions in the five recent years issued against false advertising (businesses using two or more types of advertising media are calculated repeatedly), the Internet was used as the media in 157 cases (82.6%), followed by 37 cases (19.5%) which involved the use of advertising flyers (Fig. 2).

Fig.2 Statistics on False Advertising Cases in which Sanctions were made – by type of Advertising Media



Note: Businesses using two or more types of advertising media are calculated repeatedly.

FTC Activities in September and October 2021

- ◆ On Sep. 10 and 24, the FTC held a presentation on “Law Observance and Competition in the Manufacturing Industry” in Hsinchu City and Tainan City, respectively.
- ◆ On Sep. 30, the FTC held a “Various Aspects of Trading Traps” activity at the Zhonghe Household Registration Office in New Taipei City.
- ◆ On Oct. 5, 21 and 27, the FTC held the “Various Aspects of Trading Traps” activity at the Sanchong Household Registration Office and Tucheng Household Registration Office in New Taipei City and the Kaohsiung City First Service Center of the National Immigration Agency, respectively.
- ◆ On Oct. 8, the FTC conducted a presentation on “Law Observance and Competition in the Manufacturing Industry” in Taichung City.
- ◆ On Oct. 18, the FTC held a presentation on “The Fair Trade Commission’s Regulations against False Advertising and Past Cases” in Taipei City.
- ◆ On Oct. 18, the FTC held a workshop on “Perfection of Trading Order in the Real Estate Market”.
- ◆ On Oct. 19, the FTC conducted a workshop on “How to Prevent False Advertising for Products or Services Marketed on e-Commerce Platforms.”
- ◆ On Oct. 28, the FTC held a workshop on “How to Prevent False Advertising about the Energy Efficiency of Household Appliances and the Energy Label.”



1.The FTC holding the “Various Aspects of Trading Traps” activity at the Zhonghe Household Registration Office in New Taipei City
2.The FTC conducting the presentation on “Law Observance and Competition in the Manufacturing Industry” in Taichung City



3. The FTC holding the presentation on "The Fair Trade Commission's Regulations against False Advertising and Past Cases" in Taipei City



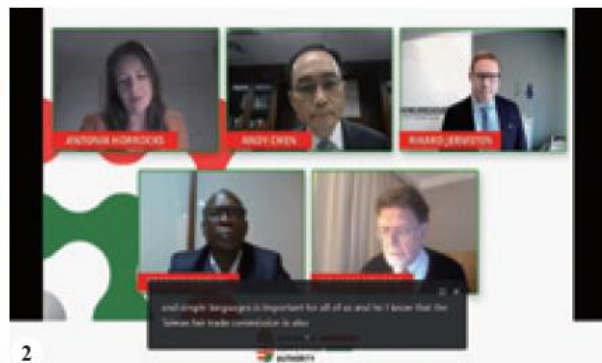
4. The FTC holding the "Various Aspects of Trading Traps" activity at the Kaohsiung City First Service Center of the National Immigration Agency

FTC International Exchanges in July and August 2021

- ◆ On Sep. 28 and 29, the FTC attended the 16th East Asia Summit on Competition Policy (videoconferencing) and the 13th East Asia Conference on Competition Law and Policy (videoconferencing).
- ◆ On Oct. 4, 5 and 7, the FTC attended the online workshop entitled Competition Neutrality held by the OECD—Korea Policy Centre, Competition Programme.
- ◆ On Oct. 13 to 15, the FTC attended the ICN Annual Conference 2021 (videoconferencing).
- ◆ On Oct. 28, the FTC attended the online workshop entitled “The Legal Model of International Law Enforcement Cooperation” held by the OECD Competition Committee.



1. The FTC attending the 13th East Asia Conference on Competition Law and Policy (videoconferencing)



2. The FTC attending the ICN Annual Conference 2021 (videoconferencing)