

# Fair Trade Commission

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### **Six Tariff Quota Bidding Companies Violated the FTA**

During the FTC's 887th Commissioners' Meeting on November 5, 2008, the Commission determined that Beansum Agricultural Products Co., Ltd., Shinn Cherng Co., Ltd., Ju Chieh Ltd., Lim Kuang Enterprise Co., Ltd., Glide Ltd., and Erhpang De Ltd. violated Article 24 of the Fair Trade Act by borrowing or lending supporting documents concerning company registration, and taking part in the tender for a tariff quota on red beans in Batch 961 and Batch 971; their actions constituted obviously unfair acts sufficient to affect trading order. The companies were not only ordered to cease the aforesaid acts immediately, but Beansum Agricultural Products Co., Ltd. and Shinn Cherng Co., Ltd. also had an administrative fine of NT\$ 1 million, respectively, imposed on them; Ju Chieh Ltd. an administrative fine of NT\$ 500,000; and Lim Kuang Enterprise Co., Ltd., Glide Ltd., and Erhpang De Ltd. an administrative fine of NT\$ 200,000 each. The total amount of administrative fines imposed on these six companies in this case was NT\$ 3.1 million.

The FTC pointed out that, prior to proceeding with the tender for a tariff quota on red beans in Batch 961, which was dated November 17, 2006, Beansum Agricultural Products Co., Ltd. and Shinn Cherng Co., Ltd. borrowed the names of the companies, Ju Chieh Ltd., Lim Kuang Enterprise Co., Ltd., and E-Green Co., Ltd., to take part in the tender for the tariff quota of red beans, for the purpose of acquiring the entire tariff quota for red beans and evading the limit of 500 tons, which was prescribed for the submission of a bid by each enterprise. The

FTC stated that through that means, in addition, Beansum Agricultural Products Co., Ltd. and Shinn Cherng Co., Ltd. obtained a tariff quota of 2,500 tons for red beans for the year, 2007; the percentage of such a tariff quota in terms of the total tariff quota for red beans for that year was 100%. It further indicated that, in addition, prior to proceeding with the tender for the tariff quota of red beans in Batch 971, which was dated November 16, 2007, Beansum Agricultural Products Co., Ltd. and Shinn Cherng Co., Ltd. borrowed the names of the companies, Ju Chieh Ltd., Glide Ltd., and Erhpang De Ltd., to take part in the tender for the tariff quota of red beans. In this way, they obtained a tariff quota of 1,738 tons for red beans for the year, 2008, and the percentage of such a tariff quota in terms of the total tariff quota for red beans for that year was 69.52%.

The FTC indicated that the Bank of Taiwan organized tenders for tariff quotas of related agricultural products, such as red beans, and the purposes of its organization were to allow each individual enterprise to acquire an opportunity to fairly participate in tenders and at the same time to let the unit offering tenders acquire the most favorable economic conditions through the regime whereby each individual enterprise, on its own accord, determined the price of a tender, and the quantity of tenders. The Commission stated that, in spite of such a regime, regulating the maximum limit for the submission of a bid by a single enterprise avoided massing the amount of the tariff quota among a minority of enterprises to ensure the competitiveness of such an imported product in the domestic market. It further stated that, because Beansum Agricultural Products Co., Ltd. and Shinn Cherng Co., Ltd. borrowed the names of several companies, Ju Chieh Ltd., Lim Kuang Enterprise Co., Ltd., Glide Ltd., and Erhpang De Ltd., to take part in the tender for the tariff quota of red beans, in this way, the actual total amount of the tariff quota of red beans for the tender in Batch 961, which these two companies had in hand, reached 100%, and the actual total amount of the tariff quota of red beans for the tender in Batch 971, which these two companies also had in hand, was 69.52%. The actions which caused these two companies to obtain the tariff quotas of red beans, which were amounts that far exceeded the maximum limits regulated by the tender notices, not only directly impaired other bidders' opportunities to win the tenders, but also made inroads on the fair competition which was centered on the essence of efficacy and competition that encompassed the quality, prices, and services. These acts were reprehensible in terms of commercial ethics, and for other competitors which complied with the essence of fair competition, the actions of Beansum Agricultural Products Co., Ltd. and Shinn Cherng Co., Ltd. constituted "obviously unfair" acts sufficient to affect trading order – Beansum Agricultural Products Co., Ltd. and Shinn Cherng Co., Ltd. had violated Article 24 of the Fair Trade Act.

Furthermore, the FTC indicated that Ju Chieh Ltd., Lim Kuang Enterprise Co., Ltd., Glide Ltd., and Erhpang De Ltd. lent the supporting documents of company registration to Beansum Agricultural Products Co., Ltd. and Shinn Cherng Co., Ltd. for their participation in

the tender, and accordingly made these two companies evade the maximum limit of the tender, which was 500 tons, and impaired market competition, even though the four companies had no intention, through the competitive tender procedure as such, of obtaining the tariff quotas for red beans and importing red beans, on their own accord, for domestic sales. The Commission stated that their acts were reprehensible in terms of commercial ethics, and violated Article 24 of the Fair Trade Act.

After the FTC considered the motives, purposes and anticipated improper profits of the unlawful acts of Beansum Agricultural Products Co., Ltd., Shinn Cherng Co., Ltd., Ju Chieh Ltd., Lim Kuang Enterprise Co., Ltd., Glide Ltd., and Erhpang De Ltd.; the degree and duration of the unlawful acts' harm to market order; the benefits derived on account of the unlawful acts; the scales, operating conditions and market positions of the enterprises; whether or not the types of unlawful acts involved in the violation had been corrected or warned against by the Central Competent Authority; the types and numbers of and intervals between past violations , and the punishment s for such violations; the remorse shown for the acts and the companies' attitude toward cooperation in the investigation; and other factors, it made the abovementioned decision.



## **The Tainan City Excavator & Bulldozer Operators Union Fined for Price-Fixing**

During the 897th Commissioners' Meeting of the FTC on January 14, 2009, the FTC determined that the fact that the Tainan City Excavator & Bulldozer Operators Union (hereinafter referred to as "Union") formulated a price table of heavy duty machines and tools was sufficient to affect the market function of supply and demand of lease services of heavy-duty machines and tools, and the union therefore violated Article 14(1) of the Fair Trade Act. The union was not only ordered to cease the aforesaid unlawful act, but an administrative fine of NT\$ 100,000 was also imposed upon that person.

The FTC indicated that it received a complaint that was based on the claim that the union raised the standard of fees for the operating services of excavators and bulldozers from July 1, 2008 onwards, and that such an act created a heavy burden for the construction industry. The findings of the FTC after investigation revealed that the union had expressed an intention to formulate a price table for heavy-duty machines and tools for the year 2005 during the 11th session of the 4th meeting of directors and supervisors held on April 11, 2005, because of the skyrocketing prices of raw materials such as international crude oil, and iron and steel. In order to respond to the increases in cost, the union further held the 1st session of the 5th interim meeting of directors and supervisors on June 3, 2008. The meeting determined that a price table of heavy-duty machines and tools for the year 2008 was to be formulated, and the union wrote official letters to its members and downstream construction enterprises stating that the table was to be put into practice from July 1, 2008 onwards. These facts were also shown in the findings. The FTC further indicated that the union was established in accordance with the Labor Union Law, and was an "enterprise" as described in Article 2(iv) of the Fair Trade Act; in the same way, its aforesaid act was a "concerted action" referred to in Article 7 of the same Act.

The Commission stated that, with respect to the intention that the union's members were to collect the lease prices of heavy-duty machines and tools on the basis of the price table, even though the FTC Newsletter No.015 / 2009. 4 4 union did not supervise such collection, and the lease prices of heavy-duty machines and tools were to be determined by the members themselves on the basis of trading conditions, the union had made it easier for its members to cooperate to raise the lease prices of heavy-duty machines and tools from July 1, 2008 onwards. The aforesaid acts of the union had been sufficient to affect the market function of supply and demand of the lease services of heavy-duty machines and tools in Tainan City, and had already violated Article 14(1) of the same Act.



After the FTC considered the motive, purpose and anticipated improper profits of the unlawful acts of the union; the degree and duration of the unlawful acts' harm to market order; the benefits derived on account of the unlawful acts; the scale, operating conditions and market position of the union; whether or not the types of unlawful acts involved in the violation had been corrected or warned by the Central Competent Authority; the types and numbers of and intervals between past violations, and the punishments for such violations; the remorse shown for the acts and the union's attitude of cooperation in the investigation; the extent to which the union deserved reprehension, and the financial strength of the union; and other factors, it made the above-mentioned decision pursuant to the fore part of Article 41 of the Fair Trade Act.

### **The Kaohsiung-Pingtung Drug Suppliers Fined for Collusion**

The Kaohsiung-Pingtung Drug Suppliers Fined for Collusion During the FTC's 895th Commissioners' Meeting on December 31, 2008, the Commission reviewed the case where a complaint was received in relation to the "Yung-Chien Advertised Drugs Association" (hereinafter referred to as the "Yung-Chien Association") in the Kaohsiung- Pingtung Area where it was alleged that it had co-maintained the prices of drugs advertised by radio stations. The FTC thus itself conducted an investigation into the actions of the "Advertised Drugs Manufacturers' Association" (hereinafter referred to as the "Manufacturers' Association"), in order to determine whether the Manufacturers' Association co-maintained prices of drugs advertised by radio stations. As a result of its investigation, it was of the opinion that the acts of both the Yung-Chien Association and the Manufacturers' Association constituted a concerted action as set forth in Article 14 of the Fair Trade Act. In the meeting, the Commission decided to impose administrative fines on 53 pharmacies and 16 drug suppliers, respectively, and administrative fines totaling NT\$ 101,950,000 were imposed.

The FTC indicated that this case originated as a result of a member of the public filing a complaint, in which it was claimed that dozens of designated pharmacies advertised drugs in

Kaohsiung County, Kaohsiung City, and Pingtung County, with the objective of monopolizing the sales and sales prices of the drugs specified by the advertisements. To this end, they had formed the “Yung-Chien Association,” and this association held a regular meeting every two months. In addition, during the investigation into this case, the Commission found out that upstream suppliers also attended and took part in the regular meeting of the “Yung-Chien Association,” and they paid an annual fee to the “Yung-Chien Association,” besides forming the “Manufacturers’ Association”. They were also involved in an illegal concerted action by jointly restraining the resale prices of products.

The FTC further indicated that all members of the “Yung-Chien Association” were drug retail enterprises that had acquired pharmacy licenses or the licenses of pharmaceutical firms in accordance with laws, and they engaged in retail operations to trade in drugs in areas such as Kaohsiung County, Kaohsiung City, and Pingtung County. The “Yung-Chien Association” included posts for a president, vice presidents, a person administering financial affairs, and a secretary, and within the association, 17 commissioners formed a committee which determined the association’s activities and where regulations concerning members’ rights and obligations and the handling of rule violations were discussed. The association on a long-term basis restrained its members’ business activities in such a way that the members might not compete in terms of prices, distribute goods without authorization, and recommend to consumers drugs of other brands (i.e., when a consumer wanted to specifically buy Product A, the pharmacy could not refer him/her to Product B which was of the same type as Product A, but another brand), so as to prevent them from lowering prices in order to promote sales. In the same way, it collected NT\$ 30,000 as a security deposit from each of its members to ensure that its members complied with the rules and resolutions. Furthermore, it imposed a fine on or ordered a member to withdraw from the association if the member violated a resolution. Consequently, the “Yung-Chien Association’s” acts that made enterprises restrain their activities among themselves, such as where the association jointly restrained members from lowering prices for sales promotion, and maintained retail prices, were sufficient to affect the market function of retail trade of drugs advertised by radio stations and sold in the Kaohsiung-Pingtung area. They therefore violated Article 14(1) of the Fair Trade Act, which was concerned with the prohibition of concerted actions.



The FTC further indicated that the “Manufacturers’ Association” was formed by a group of drug suppliers, whose members ordinarily exchanged trading information regarding the market for advertised drugs and dealt with disputes through meal meetings; they also actively took part in activities such as regular meetings and meetings of the Committee of the “Yung-Chien Association” to assist and cooperate with the “Yung-Chien Association” in dealing with disputes amongst and/or between members of the latter association. The “Manufacturers’ Association” also addressed and executed its resolutions through the “Yung-Chien Association,” and in this way it demanded that members of the “Yung-Chien Association” be prohibited from competing based on price, distributing goods without authorization, and recommending to consumers drugs of other brands. At the same time, it also, via “test purchases,” sought to determine whether such members did engage in the aforesaid prohibited items to maintain the prices of each of their advertised drugs, and if a downstream pharmacy became involved in any of the circumstances, such as competing prices, distributing goods without authorization, or recommending to a consumer a drug of another brand, it would, through the “Yung-Chien Association,” be punished by means of a collective suspension of the supply of goods, or through the imposition of a fine. Therefore, the acts of members of the “Manufacturers’ Association” resulted in enterprises restraining their activities among themselves, such as those where they jointly restrained the retail prices of members of the “Yung-Chien Association,” and prohibited members of the “Yung-Chien Association” from recommending to consumers drugs of other brands. These acts were sufficient to affect the market function of the supply and demand for drugs advertised by radio stations and sold in the Kaohsiung-Pingtung area; the acts violated Article 14(1) of the Fair Trade Act, which is concerned with the prohibition of concerted actions.

## Chin Yuan Pork Chops Co. Fined for Untrue Ad

During the FTC's 896th Commissioners' Meeting (January 7, 2009), the Commission determined that, with respect to the act of Chin Yuan Pork Chops Co. Ltd. (hereinafter referred to as "Chin Yuan Pork Chops Company"), the aforesaid company had published on a signboard the wording, "An Old Store Having Been Open for Fifty Years -- A Legend of Hsimenting -- Chin Yuan Pork Chops." The representations regarding the quality and the content of the product were false, untrue, and misleading, and the act was therefore found to violate Article 21(1) of the Fair Trade Act. The company was not only ordered to immediately cease the aforesaid unlawful act, but an administrative fine of NT\$ 200,000 was also imposed on the company.



The FTC indicated that the impression given by the wording, "An Old Store Having Been Open for Fifty Years -- A Legend of Hsimenting -- Chin Yuan Pork Chops," which was placed on the signboard of the Nankang Store of the Chin Yuan Pork Chops Company, was that this business had been established in Hsimenting 50 years ago, and the flavor of the pork chops was the flavor derived at the time of the establishment of the company, or else the company had operated for 50 years in Hsimenting. As the responsible person for the Chin Yuan Pork Chops Company, Chen, Chiu-Ling, together with the founder of the fifty-year-old "Chin Yuan Pork Chops" store in Hsimenting, Hu, Chen-Chin, had concluded the supplementary franchise agreement in 1999, the Chin Yuan Pork Chops Company should have, on the basis of such an agreement, acquired the recipe for marinating the pork chops concerned in the case, and accordingly, the flavor produced as a result of using such a recipe should have been the pork chop flavor sold by the company, or else the pork chop flavor

produced by the company should have been recognized as having the flavor produced by Hu, Chen-Chin of the original Chin Yuan Pork Chops. Nevertheless, the Chin Yuan Pork Chops Company was established in 2003, and was not a continuation of Chin Yuan Pork Chops established by Ms. Hu, Chen-Chin in Hsimenting – these two companies should have been regarded as two independent business entities. Even if this conclusion were traced back to the situation where the responsible person of the Chin Yuan Pork Chops Company (who was Chen, Chiu-Ling) had, in her own name, joined the franchise of “Chin Yuan Pork Chops” of Hu, Chen-Chin, the said situation was a circumstance that occurred in 1999. In the same way, if the number of years that the Chin Yuan Pork Chops Company had operated had been counted from the year 1999 until now, the Chin Yuan Pork Chops Company would have operated for approximately less than 10 years. Moreover, even if Chen, Chiu-Ling and the statutory responsible person had indeed used the recipe for marinating the pork chops that related to the original “Chin Yuan Pork Chops” founded by Hu, Chen-Chin, and had, after joining the franchise offered by “Chin Yuan Pork Chops,” participated in the operation of the franchised business, as well as having acquired the trademark of “Chin Yuan Pork Chops,” which was a concern in the case, these facts could not have been equated with the fact that the company had ever operated in Hsimenting. In addition, the fact that Chin Yuan Pork Chops Company had never operated in Hsimenting (during the period of the franchise, the scope of the company’s franchise operation was only limited to Taoyuan) was even insufficient to prove that the company, up until then, had operated for 50 years. Therefore, the content of the wording, “An Old Store Having Been Open for Fifty Years -- A Legend of Hsimenting -- Chin Yuan Pork Chops,” which was placed on the signboard of the Nankang Store of Chin Yuan Pork Chops Company, was not consistent with the facts.

The FTC finally indicated that, after it considered the details of the motive of the unlawful act of Chin Yuan Pork Chops Company; the degree of the unlawful act’s harm; the circumstances that made the company violate laws; the operating scale of the company; and the company’s attitude after its violation of laws, it ordered Chin Yuan Pork Chops Company to cease the unlawful act immediately and imposed an administrative fine of NT\$ 200,000 on it pursuant to the fore part of Article 41 of the Fair Trade Act.

## **Analysis of Statistics on Termination of Review of Complaints**

When one looks at the fair trade statistics for the year 2008, one will find that of the 1,477 complaints closed by the FTC in 2008, the number of complaints where decisions were made and dispositions were issued amounted to 101 (the percentage based on the ratio of such a number to the total number of complaints closed in 2008 was 6.8%). In addition, the number of cases where administrative actions such as correction programs, written advice and written requests for agencies-in-charge to take appropriate measures amounted to 2 (the percentage based on the ratio of such a number of cases to the total number of complaints closed in 2008 was 0.1%), and there were also 353 cases where non-decisions were made because these cases had not met substantial requirements prior to the

making of the decisions (the percentage based on the ratio of the number of cases in this category to the 1,477 complaints closed in 2008 was 23.9%). There were 54 complaints where the cases concerned with the same facts were re-filed (the complaints in this category were termed “cases consolidated,” and the percentage based on the ratio of the number of these complaints to the above 1,477 complaints was 3.7%). Furthermore, the number of cases regarding which the FTC terminated the review was 967 (the percentage based on the ratio of the number of these complaints to the aforesaid total number of complaints was 65.5%) ( Figure 1).

There may arise confusion regarding the results of the statistics to do with the termination of the reviews, which suggest that more than 65% of the complaints closed by the FTC were concluded by means of a “termination of review.” This may cause some to wonder why the Commission concluded complaints in such a way. Was it because the Commission was slack and failed to perform its duties, did not want to handle complaints and, therefore, concluded them carelessly and roughly? As a matter of fact, people who think in such a way misunderstand what the Commission actually does. In fact, of the total number of complaints handled by the FTC, the number of cases which were concluded by means of a “termination of review” were part of a majority, and the Commission’s determination to terminate the review of a complaint was related to the content covered by the definition of the expression: “the review of a complaint is terminated”:

1. Def ini t ion of the term “Terminat ion of review to the complaint”: Any complaints or accusations whose facts go beyond the FTC’s responsibilities, that shall be referred to other agencies according to the division of jurisdictions among agencies, or that fail to meet the FTC’s procedural requirements, all fall within the scope of the definition.

2. Types of “ Termination of review to the complaint” can be categorized into four types, and these types are: (1) criminal cases; (2) civil disputes; (3) cases falling within another agency’s jurisdiction; and (4) cases failing to meet procedural requirements (for example, the filing party withdraws its complaint, has failed to supplement the information required, has been out of contact, has complained anonymously, or has complained against a party which does not fit into the definition of the word, “enterprise,” that is provided by Article 2 of the Fair Trade Act).

When the complaints that had been concluded in 2008 are further observed, one can discover that the percentage based on the ratio of the number of cases where the means, i.e., the termination of review, applied to the total number of complaints closed in 2008 amounted to 65.5%. Of the number of cases where the means of termination of review applied, there were 7 criminal cases (the percentage based on the ratio of this number to the said number of complaints where the means of termination of review applied was 0.7 %). In addition, there were 186 civil disputes (the percentage based on the ratio of such a number to the aforesaid number of complaints where the means of termination of review applied was 19.2%), 413 cases that fell within other agencies’ jurisdictions (the percentage based on the ratio of this number to the aforesaid number of complaints totaled 42.7%), and 361 cases that failed to meet procedural requirements (the percentage based on the ratio of 361 cases to the above-mentioned number of complaints amounted to 37.3%). In particular, among the total number of

complaints which were closed in that very year and to which the means, “termination of review,” applied, the percentage based on the ratio of the number of complaints that fell upon other agencies’ responsibilities to such a total number of complaints ranked the highest for each of the last five years (Figure 2).

Figure 1. Distribution Graph of Attributes of Complaints Concluded in 2008

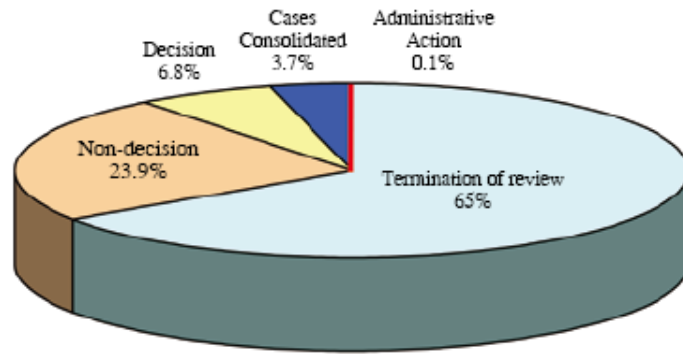
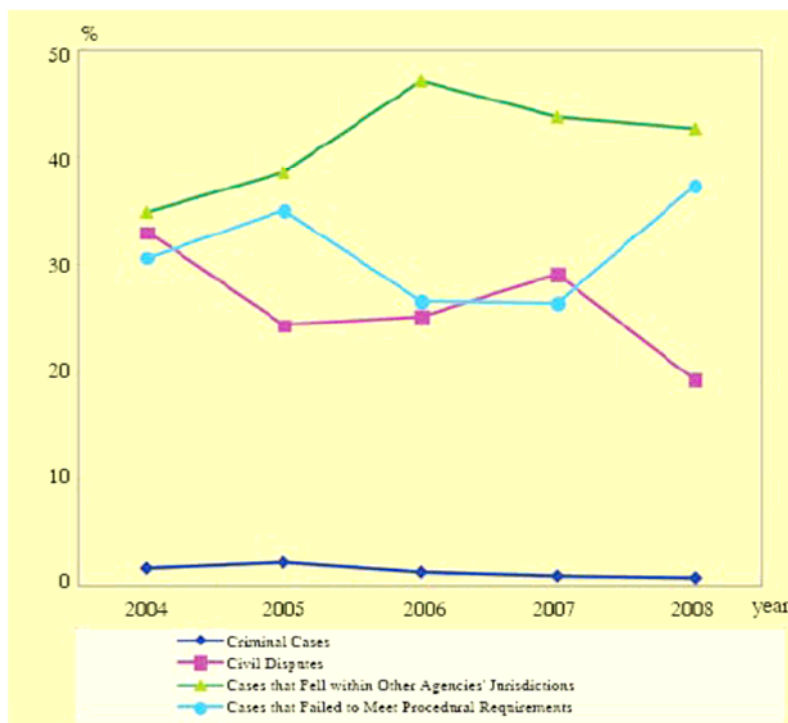


Figure 2. Reasons for Terminating the Review of Complaints for the Last Five Years



## FTC Activities in February 2009

- On February 5, the FTC dispatched staff to advocate the Fair Trade Act at Tainan Airport.
- On February 9, the FTC dispatched staff to take part in the meeting entitled “A Discussion on Matters Related to the Handling of Excess Charges Levied after Increasing the Health Tax on Cigarettes” hosted by the Department of Health.
- On February 10, the FTC invited Professor KUO Tei-Wei of the Department of Computer Science and Information Engineering, National Taiwan University to deliver a speech on “The Course of Change and Development and the Development Tendency of the Operating System.”
- On February 20, 25, and 27, the FTC dispatched staff to take part in the area meetings of the “2009 Nationwide Energy Symposium” that took place in the central part, eastern part and southern part of Chinese Taipei, respectively.
- On February 24, the FTC invited Professor CHEN Jung-Lung, Dean of the Law School, Fu Jen Catholic University to deliver a speech entitled “New Ownership Act – Analysis of Competitiveness.”
- On February 24, the FTC invited Senior Manager WEI Fu-Chien of the Market Intelligence & Consulting Institute, Institute for Information Industry to deliver a speech entitled “Analysis of the 2009 Development Tendency of the PC Industry and the New Operating System.”



## FTC International Exchanges in February 2009

■ On February 3, the FTC took part in a conference call concerned with the topic “Building a Competitive Culture in Government Processes.” The conference call was arranged by the ICN “Competition Policy Implementation Working Group.”

■ On February 10, the FTC took part in a conference call arranged by the ICN “Operational Framework Working Group.”

■ From February 16 to 20, Commissioner CHEN Chin-Min of the FTC, Director HU Kuang-Yu and colleagues of the Department of Planning of the FTC left for Paris, France to participate in the regular meeting of the OECD “Competition Committee” and the “Global Forum on Competition.”

■ From February 16 to 22, colleagues of the Department of Planning of the FTC left for Singapore to participate in the meeting of the APEC “Economic Committee,” the APEC “Committee on Trade and Investment,” and the APEC “Competition Policy and Law Group.”

