

Fair Trade Commission

【FTC Newsletter】

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Selected Cases	Far Eastern Bank's Loan Contract that Violated the Principle of Decreasing Resulted in a Fine
	Claiming Patent Rights before Completing Patent Registration is Against the FTA
	Merger between Yieh United Steel & Tang Eng Iron Works is Prohibited
	Untrue Flyers Regarding Debt Clearance Programs was Fined
FTC Statistics	Statistics for Decision Rulings
FTC Activities	FTC Activities in May 2009

Far Eastern Bank's Loan Contract that Violated the Principle of Decreasing Resulted in a Fine

During the 904th Commissioners' Meeting of the FTC on March 4, 2009, the FTC determined that the prepayment penalty terms by Far Eastern International Bank (hereinafter referred to as Far Eastern Bank) violated the principle of decreasing and were deemed as obviously unfair conduct that may affect trading order. It violated Article 24 of the Fair Trade Act and a fine of NT\$ 300,000 was imposed.

The FTC indicated that if financial institutions take advantage of their dominant economic position and the borrowers' determination to repay loans, forcing borrowers to accept the high prepayment penalties and extremely long restrictions on prepayment periods, the financial institutions fail to consider factors, such as the borrower's repayment period and remaining loan, and a decreasing prepayment penalty. As a result, mortgagers are restricted in the lockup period (the restricted prepayment period) and can not acquire new or lower interest rates, low interest capital thereby can not effectively serve as a substitute for high-interest capital, and market efficiency regarding capital allocation and interest rate competition in the housing loan market is impeded. Therefore, such behavior constitutes obviously unfair conduct that is able to affect trading order according to Article 24 of the Fair

Trade Act.

The FTC received complaints regarding the long term secured mortgages issued by Far Eastern Bank. One informant transferred the mortgage to another bank during the prepayment period and was charged a prepayment penalty by the Far Eastern Bank. After

investigation, the FTC discovered that, according to the “Amended Agreement for Time Saving Deposit-Indexed Mortgage Loans,” the prepayment penalty terms read as follows, “I agree that this is a preferential interest rate and I may not repay in full and get the consent for mortgage cancellation (or the proof for loan repayment) within 24 months since the changing date. For any violations without the consent of the Bank, I agree to pay a penalty of 1% of the original loan amount after negotiating with the Bank.” While the terms agreed on a penalty of “1% of the original loan amount,” they failed to consider factors such as the borrower’s repayment time, remaining loan, and the principle of decreasing. This constituted obviously unfair conduct that was able to

定額指數型房屋抵押貸款增補契約書

本契約之當事人(以下簡稱「本人」或「本人」) 閣下...

茲將「本人」訂立房屋抵押貸款契約之「最高利率」與「實際利率」及其他相關之條件，茲將如下述等...

本人同意自 96 年 11 月 1 日(以下稱「變更日」)起變更(變更日、本人認領、實收之申請手續費、(最高)貸款、放款、房屋抵押貸款)之利率(變更日、本人認領、實收之申請手續費、放款、房屋抵押貸款)...

借款利率及利率調整方式 (一) 調整：浮動調整

本借款利率係 實行之中之定額指數加 0.00% 浮動計算 (目前為年利率 5.5%)，如定額指數調整時，均隨之調整。

借款利率及利率調整方式 (二) 調整：限制浮動範圍

本借款利率及利率調整方式約定如下：

(一) 自變更日起至 1 年之結日起至變更日起第 1 年之末日止，按 實行之中之定額指數加 0.00% 計算，按 固定利率 (為年利率 5.5%) 計算利率方式計息；

(二) 自變更日起至 2 年之結日起至變更日起第 2 年之末日止，按 實行之中之定額指數加 0.00% 計算，按 固定利率 (為年利率 5.5%) 計算利率方式計息；

(三) 自變更日起至 3 年之結日起至借款期限屆滿之日止，按 實行之中之定額指數加 0.00% 計算，按 固定利率 (為年利率 5.5%) 計算利率方式計息，如定額指數調整時，均隨之調整。

(四) 本人同意本借款應自變更日起至變更日起 24 個月期間內，不得將借款全部還清並領取抵押貸款清償證書(或應清償證明書)，俟還清上述借款後，本人與 貴行同意，本人與 貴行同意將抵押貸款清償證書(或應清償證明書)視為有效之證明文件。

依照原貸款契約書，增補契約書之條件。

茲將增補之金額列明於後，本人認領及同意增補：

姓名：_____ (簽名)

借款利率及利率調整方式 (續前項)

本借款利率係 實行之中之定額指數加 0.00% 浮動計算 (目前為年利率 5.5%)，如定額指數調整時，均隨之調整。

或，費用收取：上述變更手續費及房屋抵押貸款手續費 參閱說明書

多，本行補償之費用係本人與 貴行共同負擔，本行補償之費用期限至少五日，本人認領及同意增補(或應清償證明書)已完全知悉及同意，且無異議。(定額指數說明詳見說明書，本人認領及同意增補之條件。)

日期：_____

背面請保人簽名蓋章

1. 請將本契約...

本人：_____ 身分證字號：_____

地址：_____

項目 / 姓名	簽名	日期

affect trading order according to Article 24 of the Fair Trade Act.

Considering Far Eastern Bank’s motive, objectives, expected benefits resulting from illegal behavior, the damage to trading order, the period of damage to the trading order, gains from unlawful activities, the size, operation, sales, and market status of the bank, whether the central competent authority had corrected or warned of such violations, the type/times/interval/penalty for law violations, the bank’s attitude after committing illegal activities and manner of cooperation, and other factors, the FTC ordered Far Eastern to suspend the illegal activities and imposed a fine of NT\$ 300,000 on it.

Claiming Patent Rights before Completing Patent Registration is Against the FTA

During the 908th Commissioners' Meeting of the FTC on April 1, 2009, the FTC determined that the case on Asia Alliance International Co., Ltd. Asia Alliance International Co., Ltd. claiming its patent rights against a third party before completing the registration at the competent authority regarding patent licensing for new utility model No. 214785 and new utility model No. M284765. Such behavior constituted obviously unfair conduct which may affect trading order and violated Article 24 of the Fair Trade Act. The illegal activities were suspended.

After investigation, the FTC found out that the patentee for the new utility model patent No. 214785 was Zacabo Co., Ltd.; the Firm signed patent licensing agreements with Asia Alliance International Co., Ltd. on September 12, 2005 and May 20, 2007, respectively. The licensing periods extended from June 15, 2005 to August 29, 2014 and from May 20, 2007 to August 29, 2014, respectively. The patentee of the new utility mode patent No. M284765 was Mr. Shen; Mr. Shen signed a patent licensing agreement with Asia Alliance International Co., Ltd. on May 20, 2006, and the licensing period was from May 20, 2006 to October 11, 2015. Even though Asia Alliance International Co., Ltd. applied for registration of the patent licensing to the Intellectual Property Office of the Ministry of Economic Affairs on December 26, 2008 regarding the above two patents, the Intellectual Property Office of the Ministry of Economic Affairs only approved the registration for patent licensing for new utility model No. 214785 and new utility model No. M284765 on February 25, 2009. Asia Alliance International Co., Ltd. claimed its patent rights against a third party on December 31, 2008 and January 9, 2009; at that time, the registration for patent licensing was not completed. Pursuant to Article 59 of the Patent Act, "The assignment, trust or license made by the patentee of the patent right of an invention to another person to practice the invention, or the pledge created on the patent by the patentee shall not be asserted against any third party, unless it has been registered with the Patent Authority." Asia Alliance International Co., Ltd. claimed that its licensed patent rights for new utility model No. 214785 and new utility model No. M284765 had been damaged by a third party before it could legally exercise its rights against a third party. Such behavior is condemned by business ethics and constitutes obviously unfair conduct which may affect trading order; it thus violated Article 24 of the Fair Trade Act.

Merger between Yieh United Steel & Tang Eng Iron Works is Prohibited

During the 913th Commissioners' Meeting of the FTC on May 6, 2009, the FTC determined to prohibit the merger filing in which Yieh United Steel Corp. (hereinafter referred to as Yieh United) intended to acquire 34% shares of Tang Eng Iron Works Co., Ltd. (hereinafter referred to as Tang Eng) pursuant to the Fair Trade Act.

The FTC indicated that even though the stainless steel industry is a globalized market, relevant products circulate around the world, and the price fluctuates according to the international price movements.

However, after investigation, the FTC found out that its imports are still affected by geographic factors, long delivery time, international raw material prices, foreign exchange risk, floating supply of imported materials, and unmanageable quality. After the disputed merger, the enterprise will control more than 50% of the market share in the domestic market. The competitive pressure between firms in this merger will decrease, and they will be less concerned when adjusting product prices unilaterally. The merged firm will be more influential in raising the market price, thus creating the dual effects of consistent pricing or united price rises. On the other hand, even though the disputed merger may help reduce costs, expand the economic scale, and improve international



competitiveness, if imports by downstream enterprises are impeded, market concentration in the domestic market and the market share of the combined firm will increase, which will affect the mid- and downstream domestic stainless steel companies and hinder competition in domestic markets. In addition, despite the fact that technology in the stainless steel industry is rather mature, factory costs and investments in hot mills/cold mills cannot be easily converted to other industries; possible and timely market entry by potential competitors is thus unlikely. Besides, the firms in this merger used to have the largest and second largest

market shares; they competed against each other prior to the merger. After the merger, the countervailing power between Yieh United and Tang Eng will be weakened, and competition between the two will be eliminated; thus, the merged entity will be less concerned when adjusting product prices unilaterally. The competition in the stainless steel boards market will be hindered, and the disadvantages of competition restraints will outweigh the overall economic benefits.

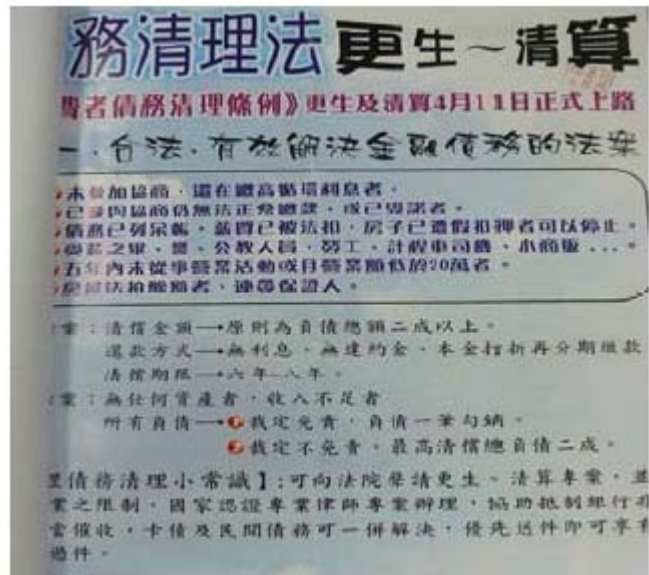
The FTC also indicated that, in considering the unilateral effects, coordinated interactions, extent of entry, countervailing power, and other factors affecting competition in the merger between Yieh United and Tang Eng, the disadvantages of competition restraints outweigh the overall economic benefits; thus, the merger was prohibited pursuant to Article 12(1) of the Fair Trade Act.

Untrue Flyers Regarding Debt Clearance Programs was Fined

During the 911th Commissioners' Meeting of the FTC on April 22, 2009, the FTC determined that the case involving Bao-Yang Finance Co., Ltd. (hereinafter referred to as Bao-Yang Co.). Bao-Yang Co. alleged in the flyers regarding the debt clearance program that "20 to 30% of the debt can be repaid in an installment of 6 to 8 years;" "what is rehabilitation? repay more than 20% of total debts in general;" "pursuant to 'Special Conditions for Primary Residential House,' your house can be saved from foreclosure;" "those who participated in negotiations or have difficulty in making payments can apply for rehabilitation;" "applicable to those who have been in the negotiation process but still fail to pay regularly or those who broke the agreements;" "the liquidation program: all debts→2 still culpable; the maximum payment is 20% of your debt;" "what is a 'new start program?' only repay about 20% of your total debt in 6 to 8 years, monthly or quarterly payments, interest free;" (according to a Taipei District Court 2008.8.4 precedent, you can have a new start if you pay NT\$80,000 out of a NT\$520,000 debt, about 16%). "till September 15, the association has assisted 46 debtors to finish their rehabilitation procedure, as well as in 3 settlements, and more than 60 negotiations." It also published advertisements alleging "we can reduce debts to less than 30% for lawful actions" on the websites. The representations as to the content and quality of the product were false, untrue, and misleading. The company violated Article 21(3) which applied mutatis mutandis to Paragraph 1 of the same Article of the Fair Trade Act. An administrative fine of NT\$ 700,000 was imposed on Bao-Yang Co.

The FTC indicated that pursuant to the first debt rehabilitation program approved by the Taipei District Court on August 1, 2008 (2008 Zhi-Xiao-Zhai-Geng No. 1), the decision stated that the percentage of debt repaid was not the only standard in judging whether the

rehabilitation was fair or not. The calculation was to be based on the debtor's income and expenditure in the 2 years before filing the application and to consider the income excluding necessary expenditures during the rehabilitation; the repaid amount and percentage are merely a neutral conclusion after mathematical computation, which shall not be biased by any judgment. Bao-Yang Co. had no basis for allegations in the flyers that "20 to 30% of the debt can be repaid in an installment of 6 to 8 years;" "Rehabilitation: repay more than 20% of total debts in general;" "the liquidation program: all debts→○ 2 still culpable; the maximum payment is 20% of your debt;" "what



is rehabilitation? Only repay about 20% of your total debt in 6 to 8 years, monthly or quarterly payments, interest free;" (according to a Taipei District Court 2008.8.4 precedent, you can have a new start if you pay NT\$80,000 out of a NT\$520,000 debt, about 16%).

Next, the flyers alleged that "pursuant to 'Special Conditions for the Primary Residential House,' your house can be saved from foreclosure;" even though Article 43(3) of the Consumer Debt Clearance Regulations (hereinafter referred to as the Clearance Regulations) states that when applying for a new start program, debtors with a primary residential house shall indicate whether to apply special conditions for a primary residential house to the new start program; Article 54 of the Clearance Regulations stipulates that the debtor may negotiate with creditors of the primary residential house and apply the special conditions for primary residential houses to the new start program; provided that this does not apply to cases where there are other property rights on the primary residential house and where rights owners do not agree to the rehabilitation program. If the debtors and creditors of the primary residential house are in the pre-negotiation stage, there are also prerequisites for the application of special conditions for the primary residential house.

Allegations in the flyers failed to specify that "the conditions do not apply to cases where there are other property rights on the primary residential house and where rights owners do not agree to the rehabilitation program" and the prerequisite "to negotiate with creditors of the primary residential house." Debtors may be misled to believe that once special conditions for the primary residential house apply to the rehabilitation program, then the house can be free from foreclosure. The flyers also alleged that "those who participated in negotiations or have difficulty in making payments can apply for the new start program," and that the

program is “applicable to those who have been in the negotiation process but still fail to pay regularly or those whose property has been damaged.” Pursuant to Article 151(5) of the Clearance Regulations, debtors who reached an agreement with financial institutions may not apply for new start or liquidation, provided that the difficulty in performing such programs was caused by reasons not attributable to oneself. The above allegation failed to specify the prerequisite that “the difficulty in performing such programs was caused by reasons not attributable to oneself.” Debtors may be misled in that regardless of whether they are culpable or not, applications for new start programs are always available; this contradicts the purpose of the above-mentioned regulation. Bao-Yang Co. violated Article 21(3) which applied *mutatis mutandis* to Paragraph 1 of the same Article of the Fair Trade Act.

The FTC indicated that a disputed flyer published in the name of the Consumer Rehabilitation Association alleged that “till September 15, the association has assisted 46 debtors to finish their new start procedure, as well as in 3 settlements, and more than 60 negotiations.” Such a flyer was prepared and distributed by Mr. Zhou, a volunteer at the said association and also a staff of Bao-Yang Co., Taichung Branch. Mr. Zhou admitted that the contents of the flyer were provided by the manager of Bao-Yang Co., Taichung Branch, and that the fax number of Bao-Yang Co. (where Mr. Zhou works) was listed on the advertisement. Bao-Yang Co. did know that the Consumer Rehabilitation Association was a non-profit organization, which does not engage in debt clearance programs; still, the manager of Bao-Yang Co., Taichung Branch gave relevant statistics to Mr. Zhou in order to publish the data in the name of the Consumer Rehabilitation Association, in order to solicit more trading counterparts for Bao-Yang Co. In fact, the statistics were concerned with the number of cases accomplished by Bao-Yang Co., which was totally unrelated to the Consumer Rehabilitation Association. As a result, the allegation contradicted the facts and misled the public. The statements were false, untrue, and misleading representations. They violated Article 21(3) which applies *mutatis mutandis* to Paragraph 1 of the same Article of the Fair Trade Act.

Statistics for Decision Rulings

1. Definition

(1) Cases subject to decision rulings: These refer to complaints received by the FTC or FTC self-initiated investigation cases. After being discussed at the FTC Commissioners' Meeting, decisions on violations of the Fair Trade Act, the Supervisory Regulations Governing Multi-Level Sales, and other relevant regulations are resolved and sent out.

(2) Decision ratio = number of decisions / (number of cases closed – number of cases consolidated) * 100%

2. Statistics for Decision Rulings

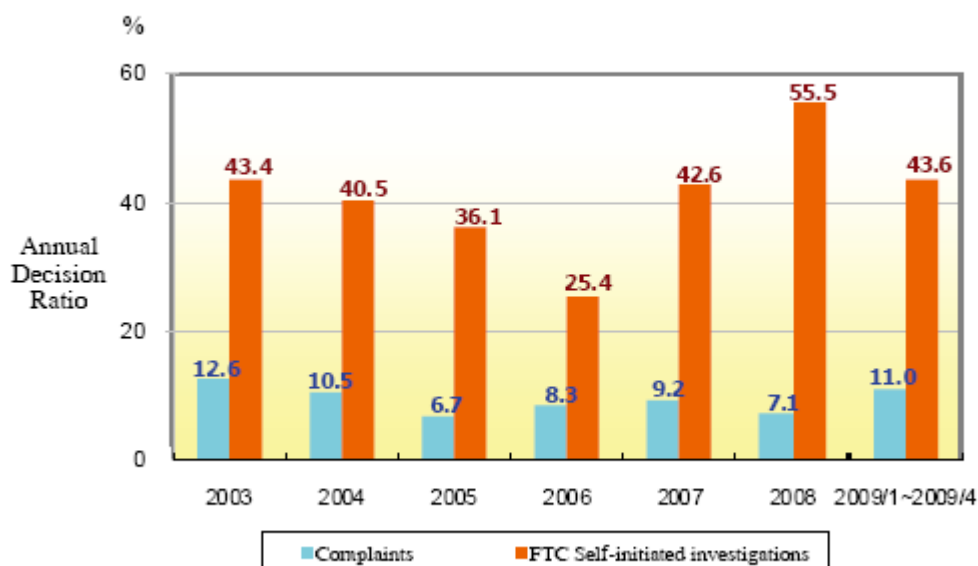
(1) Number of decisions and decision ratio

There were 71 decision rulings from January to April 2009, with a total of 160 enterprises subject to such decisions. Divided by case types, there were 53 complaints and 18 FTC self-initiated investigation cases; if consolidated cases are excluded, the decision ratio is 11.0% for complaints and 43.6% for FTC self-initiated investigation cases from January to April 2009.

(2) Cases of Decisions Involving Illegal Practices

As for illegal practices(including cases with more than one illegal practice), 14.1 % of the decisions involved restrictive competition, 71.8 % unfair trade practices, and 12.7 % improper multi-level sales, over the period from January to April 2009.

Annual Decision Ratios – Complaints and FTC Self-initiated Investigation Cases



Gases of Decisions – Illegal Practices

Unit: Cases

Year	Cases of Decisions	Anti-competitive practices	Monopolies (Article 10)	Mergers (Article 11)	Concerted Actions (Article 14)	Resale Price Maintenance (Article 18)	Impeding Fair Competition (Article 19)
			Unfair Trade Practice	Counterfeiting Commodities or Trademarks (Article 20)	False, Untrue or Misleading Advertisements (Article 21)	Damage to Business Reputation (Article 22)	Deceptive or Obviously Unfair Conduct (Article 24)
2006	175	19	-	3	9	3	4
2007	184	15	-	4	7	3	1
2008	169	15	-	4	9	-	2
Jan.-Apr., 2009	71	10	-	2	6	1	1
2006	139	-	95	2	47	18	-
2007	137	1	88	-	50	29	6
2008	118	1	93	-	28	32	4
Jan.-Apr., 2009	51	-	43	2	8	9	1

Note : The number of illegal practices may exceed the total number of cases involving complaints subject to decision rulings because a case may involve more than one illegal practice.

FTC Activities in May 2009

- On May 4 and 5, the FTC hosted a “Workshop on the Shipping Industry and Competition” in Yilan.
- On May 4, 14, 18 and 27, the FTC arranged “Fair Trade Act Training Camps” at Far East University, National Kaohsiung First University of Science and Technology, Shu-te University, and National University of Tainan, respectively.
- On May 6 and 14, the FTC arranged “Fair Trade Act Training Camps” for faculty and students of the Department of Economics, Chinese Culture University and graduate students of the Department of Economics, National Taipei University.
- On May 8, the FTC invited Professor Dorsey D. Ellis, Jr. of Washington University in St. Louis to present a speech on “Criminal Antitrust Enforcement in a Global Economy.”
- On May 11 and 12, the FTC hosted the “Propagation of the Division of Labor between the

FTC and Other Departments” in Taichung City.



1. Professor Dorsey D. Ellis, Jr. of Washington University in St. Louis delivering a speech on “Criminal Antitrust Enforcement in a Global Economy.”
2. Professor Yih-nan Liaw of Shih Hsin University School of Law delivering a speech on “Interlacing and Difference between Vertical Restricting Competition and Obviously Unfair Conduct.”

- On May 12, the FTC invited Professor Yih-nan Liaw of Shih Hsin University School of Law to give a speech on “Interlacing and Difference between Vertical Restricting Competition and Obviously Unfair Conduct.”
- On May 12, 19 and 22, the FTC hosted workshops on the “FTC’s Propagation of Banking Regulations” in Taichung City, Kaohsiung City, and Taipei City, respectively.
- On May 15, the FCT held a conference regarding the draft amendments of the “FTC Regulations on Information Disclosure for Arts & Science Cram Schools.”
- On May 15 and 26, the FTC held the 2009 North District “Propagation of Multi-level Sales and Hygiene-related Regulations” and the “Propagation of On-line Record-filing and Tax Regulations for Multi-level Sales Enterprises” in Taipei City and Taichung City, respectively.
- On May 26, the FTC held the “2009 FTC Lectures on the Fair Trade Act: Regulations and Case Study on the Business Activities of Land Administration Agents under the Fair Trade Act.”



3. The FTC hosting a Propagation of the “FTC’s Introduction to Banking Regulations” in Taichung City.
4. The FTC hosting a “Propagation of Multi-level Sales and Hygiene-related Regulations” in Taipei City.