

Fonterra Brands (New Young) Pte. Ltd. & Fonterra (Ing.) Ltd.

1403rd Commissioners' Meeting (2018)

Case: Fonterra Brands (New Young) Pte. Ltd. Taiwan Branch and Fonterra (Ing.) Ltd. Taiwan Branch were complained for obstructing other companies through upstream counterparts from entering domestic market in violation of the Fair Trade Law

Keyword(s): Boycott, imported product, import permit

Reference: Fair Trade Commission Decision of October 3, 2018 (the 1403rd Commissioners' Meeting)

Industry: Manufacture of Dairy Products (0850)

Relevant Law(s): Article 20 of the Fair Trade Law

Summary:

1. The FTC received complaints that Fonterra Brands (New Young) Pte. Ltd. Taiwan Branch (hereinafter referred to as New Young Taiwan) and Fonterra (Ing.) Ltd. Taiwan Branch (hereinafter referred to as Fonterra Taiwan) impeding other companies from entering the domestic market by requesting Fonterra Co-Operative Group (hereinafter referred to as Fonterra Group) of New Zealand to refuse to issue product traceability documents to such companies. Therefore, the conduct was in violation of Article 20(i) of the Fair Trade Law.
2. Findings of the FTC after investigation:
 - (1) The products in the domestic butter market included natural butter (animal butter) and artificial butter (vegetable butter). Most natural butter was imported from New Zealand, Australia and Europe while the artificial butter was produced by domestic companies. Product sales fluctuated as a result of price changes and user habits. According to the industrial database of the FTC, New Young Taiwan and Fonterra Taiwan marketed different types of products. The former mainly sold natural butter and the latter powdered milk for baking. New Young Taiwan accounted for about 17.46% of the overall butter market and Fonterra Taiwan 6.72%. Neither of them achieved the threshold to be considered a monopolistic business.
 - (2) The products of Fonterra Group were mostly marketed through its branches or subsidiaries. When products were exported, the group would issue the MPI Healthcare Meeting Compliance Certificate (HMCC) and the test report or import permit. Both Fonterra Taiwan and New Young Taiwan were branches of Fonterra Group. They represented Fonterra Group and the overall marketing pattern was consistent with the global strategy of the group. There was no need or intention to boycott other businesses from entering the domestic market.
 - (3) The FTC's inspection of the emails between Fonterra Group personnel showed the the contents were mainly about transaction locations and quantities and discussions of details related to issuance of proof documents or inquiries about whether the import country on the MPI HMCC could be indicated as part of Asia when products were transshipped through a third country. All such information had nothing to do with Fonterra Taiwan or New Young Taiwan. Furthermore, the two companies made direct purchases through the group system to import their

products. Therefore, when other companies were unable to complete transactions or obtain related certificates, there was no concrete evidence to prove it was the result of obstruction from Fonterra Taiwan or New Young Taiwan. Therefore, the FTC concluded it was difficult to consider Fonterra Taiwan and New Young Taiwan were in violation of the Fair Trade Law based on available evidence.

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