

Chunghwa Telecommunications Co., Ltd.

1430th Commissioners' Meeting (2019)

Case: Chunghwa Telecom was complained for violating the Fair Trade Law by its offer of multimedia-on-demand services

Keyword(s): Chunghwa Telecom, MOD, viewing rate, revenue allocation

Reference: Fair Trade Commission Decision of April 3, 2019 (the 1430th Commissioners' Meeting)

Industry: Wired Telecommunications Activities (6101)

Relevant Law(s): Articles 9, 20, 21 and 25 of the Fair Trade Law

Summary:

1. Taiwan Interactive Television Company, YouTube and Chunghwa Chaolian Multimedia Co., Ltd. (together hereinafter referred to as the informers) filed a complaint that the practice of Chunghwa Telecommunications Co., Ltd. (hereinafter referred to as Chunghwa Telecom), with its monopolistic status in the multimedia-on-demand (hereinafter referred to as MOD) service market, in its plan in July 2017 of revenue allocation according to “viewing rates” had been in violation of Articles 9, 20, 21 and 25 of the Fair Trade Law.
2. Findings of the FTC after investigation:
 - (1) When renewing MOD contracts in July 2017, Chunghwa Telecom did not use disconnection as the means to force channel operators to choose calculation of revenue allocation according to viewing rates. The records of Chunghwa Telecom's presentation and explanation to channel operators they could choose calculation of revenue allocation based on viewing rates, the contracts signed with MOD channel operators and accessory contracts, business correspondence associated with contract negotiations, minutes of meetings with operators of the family deluxe package channels, and the FTC questionnaire filled out by channel operators, all indicated Chunghwa Telecom had not forced channel operators to choose calculation of revenue allocation according to viewing rates as the contract renewal condition. Therefore, the FTC found it difficult to conclude that Chunghwa Telecomm had violated Subparagraphs 1 and 4 of Article 9 and Subparagraph 5 of Article 20 of the Fair Trade Law.
 - (2) When the informers rejoined Chunghwa Telecom to operate the family deluxe package channels on July 15, 2017, they were told by Chunghwa Telecom that they could not participate in the allocation of subscription fees for the second half of that month. Since the MOD package prices were determined by channel operators after consultations and Chunghwa Telecom only announced the results and collected the fees from subscribers, Chunghwa Telecom could not decide the rates on its own, not to mention unilaterally raising or changing the subscription fees for the month in order to allow the new channel operators to participate in revenue allocation. The FTC's investigation showed that the informers renewed their accessory contracts with Chunghwa Telecom while agreed to air the channels on July 17, 2017 and to participate in revenue allocation starting on August 1 after adjustment of package prices. This was the outcome of negotiations between both sides of the contracts. Consequently, the FTC found it impossible to conclude Chunghwa Telecom had violated Subparagraphs 2, 3 and

4 of Article 9 of the Fair Trade Law by forcing the informers to agree not to participate in the allocation of revenue for the second half of July 2017.

- (3) Chunghwa Telecom paid channel operators for each channel on a monthly basis according to two different principles: calculating revenue allocation according to fixed amounts and calculating according to viewing rates. After Chunghwa Telecom adopted the viewing rate as the revenue allocation standard as a result of channel operators' repeated requests for a fair and reasonable revenue allocation system, the amounts paid to channel operators on a short-term contract (one year) became smaller, but it was justifiable under the viewing rate principle. Although the stipulations in the contract and accessory contract applied to all channel operators, channel operators could still choose the more advantageous one of the two aforementioned ways of revenue allocation calculation in accordance with their management condition and channel types without being subject to the restriction of Chunghwa Telecom. For this reason, the FTC found it impossible to conclude that Chunghwa Telecom had violated Subparagraph 2 of Article 20 of the Fair Trade Law by engaging in discriminatory treatment without any justifications.
- (4) As for the accusation that Chunghwa Telecom had misled consumers by announcing the informers' channels would be removed from the packages and the package prices would be adjusted, the FTC's investigation indicated that the content of the news release from Chunghwa Telecom had not been inconsistent with the fact, nor did it cause the general or concerned public to have wrong perceptions or make wrong decisions. Furthermore, as the information was announced only to existing subscribers, it did not have the effect of attracting new subscribers, nor did it affect transaction decisions on the market. Hence, the FTC concluded that the content of the news release from Chunghwa Telecom had not violated Articles 21 and 25 of the Fair Trade Law.

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