

Taiwan Everpure Co., Ltd.

1504th Commissioners' Meeting (2020)

Case: Everpure Taiwan was complained for restricting distributors from deciding resale prices or selling through certain channels in violation of the Fair Trade Law

Keyword(s): Water purifier, filter

Reference: Fair Trade Commission Decision of September 2, 2020 (the 1504th Commissioners' Meeting)

Industry: Wholesale of Electrical Household Appliances (4561), Wholesale of Other Machinery and Equipment (4649)

Relevant Law(s): Articles 19 and 20 of the Fair Trade Law

Summary:

1. The complainant had marketed purifiers and filters on an online platform in disregard of the retail price list provided by Taiwan Everpure Co., Ltd. (hereinafter referred to as "Everpure Taiwan") and as a result Everpure Taiwan had discontinued its supply to the complainant. At the same time, Everpure Taiwan also imposed "e-commerce retailer regulations" to restrict distributors from selling the aforesaid products on certain websites or through certain channels. The complainant thought the conduct of Everpure Taiwan was in violation of the Fair Trade Law.
2. Findings of the FTC after investigation and grounds for non-disposition:
 - (1) Everpure Taiwan sold water purifiers and filters. According to the statements from the company and its distributors, the business pattern was outright purchase. According to the complainant, because the prices he labeled on the products he sold on the online platform were lower than the suggested prices from Everpure Taiwan, the company therefore discontinued supply to him. In addition, the complainant also provided its Line conversation records with Everpure Taiwan in July 2017 as evidence. To the contrary, while Everpure Taiwan admitted that it indeed had suspended supply to the complainant earlier, the company claimed that it resulted from the complainant's misappropriation of the company's image files between 2016 and 2017. Meanwhile, Everpure Taiwan had also provided screenshots of internal emails and cell phones, as well as Line conversation records as proofs. Apparently, both parties had a dispute over usage of image files and copyright licensing. Thus, failing to sell products in accordance with the suggested prices of Everpure Taiwan was not necessary the reason for discontinuation of supply to the complainant. As there might have be a number of reasons for Everpure Taiwan to discontinue its supply to the complainant, it was difficult to conclude that Everpure Taiwan had imposed restrictions for resale price maintenance simply based on the Line conversations recorded in July 2017. Moreover, the complainant admitted after all that its business relationship with Everpure had been resumed in 2018.
 - (2) Although the contracts Everpure Taiwan signed with its distributors between 2015 and 2017 carried terms of price agreements and breach-of-contract penalty stipulations, it asserted that it had never asked for compensation or terminated the contract according to the aforesaid terms. Besides, when the FTC conducted field visits to distributors of Everpure Taiwan, some of them disclosed that although the company had indeed requested them to sell the products in accordance with the

suggested price list, but none of them had been punished for failing to comply with the regulation. Consequently, based on available evidences, the FTC was unable to conclude that the Everpure Taiwan had imposed resale price maintenance restrictions on distributors.

- (3) As for the accusation that Everpure Taiwan has imposed “e-commerce retailer regulations” restricting distributors from selling the aforesaid products on certain websites or through certain channels, the FTC’s investigation revealed that the market power of Everpure Taiwan was limited. There was no dependency between Everpure Taiwan and its distributors. Meanwhile, Everpure Taiwan never really enforced the regulations or requested the distributors to engage in certain activities. Some of the distributors interviewed had seen the regulations, and some of them testified that Everpure Taiwan had not restricted them from marketing on the Internet. In addition, the products of Everpure Taiwan could also be seen on the certain websites listed in the regulations. In other words, based on existing evidences, the FTC found it difficult to conclude that Everpure Taiwan had restricted distributors to sell through certain channels.

Appendix:

Taiwan Everbright Co., Ltd.’s Uniform Invoice Number: 22153660

Summarized by: Wu, Chien-Hsing; Supervised by: Chen, Shu-Hua