

Surpass Power Plus Co., Ltd.

1585th Commissioners' Meeting (2022)

Case: Surpass Power Plus was complained for violating the Fair Trade Law for restricting resale prices of car ignition coils

Keyword(s): Car ignition coil, market share

Reference: Fair Trade Commission Decision of February 9, 2022 (the 1585th Commissioners' Meeting); Letter Kung Zhi Tzu No.1111360110

Industry: Manufacture of Other Electrical Equipment (2890)

Relevant Law(s): Article 19 of the Fair Trade Law

Summary:

1. An informant accused Surpass Power Plus Co., Ltd. (hereinafter referred to as "Surpass Power Plus") of signing "Power Plus road version reinforced coils (car ignition coils, hereinafter referred to as "the products in question") distribution contracts with distributors, but requested the informant to pay NT\$1 million New Taiwan dollars (same currency applies hereinafter) for breach of contract if failing to sell the product in question according to its suggested price. The informant thought the practice was in violation of Article 19 of the Fair Trade Law.
2. Findings of the FTC after investigation and grounds for disposition:
 - (1) According to Point 1 of the distribution contract signed between the informant and the accused in March 2019, the informant acquired each set of the products in question for 4,800 dollars. Meanwhile, it was stipulated in Point 2 that if having trouble selling the products in question, the distributor should ask Surpass Power Plus for assistance. If the condition was not improved, Surpass Power Plus would unconditionally buy back the products at 5,000 dollars per set. According to the contract, the accused provided the products in question to be distributed by downstream businesses.
 - (2) It was also specified in the contract that 1 million dollars had to be paid for jeopardizing the interests of the accused if a distributor sold the products in question at any price lower than the suggested price. When discovering the informant selling the products in question at prices lower than the suggested price, the accused requested the court to sanction the informant and made him pay the compensation. In other words, Surpass Power Plus adopted the measures of using the compensation stipulation in the contract, commissioning a lawyer to issue letters to notify the informant that the company would

terminate the contract and ask for compensation, and also going to the court with the informant for mediation to force the informant to sell the products in question at the suggested price.

- (3) Article 19(1) of the Fair Trade Law forbids enterprises to impose resale price restrictions without justification. To confirm whether such conduct is in violation of the law, besides taking consideration the market power of the enterprise imposing the resale price restriction, it is also necessary to analyze whether the resale price restriction imposed has actually achieved any effect of restriction before any decision can be made.
- (4) The scale of the market of the products in question in 2020 was over 300 million dollars. There were more than 200 businesses marketing such products and the brands were many. Market competition was fierce. Surpass Power Plus was only one of the competitors and accounted for just a rather small market share. Before signing contracts with Surpass Power Plus, trading counterparts, including the informant, had many brands to choose and decide which one to do business with. Surpass Power Plus was not the only option and did not have the power to restrict market competition. In conclusion, the FTC found it difficult to consider the company had violated Article 19(1) of the Fair Trade Law.

Appendix:

Surpass Power Plus Co., Ltd.'s Uniform Invoice Number: 54943739

Summarized by: Tsai, Tsung-Yung; Supervised by: Ho, Yen-Jung