



Taiwan Competition News: Recent Changes in Law

February 2012
Volume 1 Issue 1

LCS & Partners 協合國際法律事務所
5F., No. 8, Sec. 5, Xinyi Rd., Taipei 110, Taiwan
www.lcs.com.tw · +886-2-2729-8000

New Leniency Program for Suspected Concerted Actions

INSIDE THIS ISSUE

- 1 New Leniency Program
- 1 Increased Penalties
- 2 Non-Celebrity Endorsements in Advertising
- 3 Merger Control Corner
- 4 Competition Group @ LCS

A leniency program for potential unlawful actions constituting “**concerted action**” under the ROC Fair Trade Act of 2011 (the “**FTA**”) was recently instituted towards the end of 2011, due in part to discussions between the Taiwan Fair Trade Commission (“**TFTC**”) and the Organisation for Economic Co-operation and Development (OECD).

The leniency program is described in new Article 35-1 of the FTA and is available to parties involved in concerted actions that are not currently under investigation by the TFTC. Anyone involved in a potential concerted action can apply, except for “those that have coerced others to be involved in or eliminated from a concerted action.” (See Proposed Regulations Article 2.)

Please see *New Leniency Program* on page 2

Raised Latte Prices: Increased Penalties for Monopolies and Concerted Actions

*Alert: Higher Penalties
Possible for Monopolistic
Activities and Concerted
Actions*

During the second half of 2011, Taiwan’s four largest convenience stores raised their prices for **made-to-order café latte drinks**. President (operators of 7-Eleven), FamilyMart, Hi-Life, and OK Mart simultaneously increased the prices of these drinks. This was deemed to be concerted action by the TFTC and therefore in violation of Article 14 of the FTA. The TFTC ordered the four companies to immediately cease the unlawful act and also imposed on them administrative fines of NT\$16 million, NT\$2.5 million, NT\$1 million, and NT\$500,000, respectively. The fines totaled NT\$20 million (which is about US\$667,500).

Please see *Increased Penalties* on page 3

Celebrity or Not: New Fines for Bloggers for False Advertisements

Celebrity endorsements have long been scrutinized for truth and veracity. However, non-celebrities have also been found to endorse products and services using false or misleading methods.

“[N]on-celebrities have also recently been found to endorse products and services using false or misleading methods.”

A popular blog that discusses the **latest technological gadgets** was found to have advertised a new camera, which was not yet released to the general public at the time of the blog post. The posting endorsed the camera as being a good product and contained some sample images. While the sample images were purported to have been captured by the camera being discussed, they were in actuality shot with another type of camera. In response, the FTA has been revised to allow for enforcements of non-celebrity endorsements as well.

Paragraph 4 Article 21 of the FTA states, “Where anyone provides testimonials that he or she knows or should have known is misleading, he or she shall be jointly and severally liable with the advertiser for damages arising therefrom.” The amendment **added** a provision as follows: “Testimonial providers who are not celebrities, professionals, or organizations who provide any testimonials that they know or should have known is misleading shall be jointly and severally liable with the advertiser for damages arising therefrom....” Anyone found in violation of this provision may be subject to fines **up to ten times the amount** that they were paid for their endorsement.



Reduced Penalties for Participation in Leniency Program May Be a Better Result Than Waiting for Enforcement

New Leniency Program from page 1

Furthermore, applicants for the leniency program may not, prior to investigation by the TFTC, destroy, falsify, alter, or hide relevant evidence. Also, they may not directly or indirectly disclose to third parties the fact that they are preparing to apply for leniency.

As the laws and proposed regulations are quite new, and as no leniency applications have yet been submitted, the prerequisites are not entirely clear. An **application form** will soon be set forth by the TFTC, and shall likely comprise of the reporting entity’s basic information as well as relevant evidence for the concerted action. Additional conditions will be imposed by the TFTC if the filing receives an initial approval, during which additional assistance will be requested from the reporting party.

The qualifications, standards of mitigation or exemption, number of companies, submission of violation evidence, privacy protection, and other enforcement rules will also be further promulgated by the TFTC.

Increased Penalties from page 1

However, public opinion seemed to express that such enterprises were assessed fines that were too small relative to their annual revenues in the made-to-order café latte market. This product earned revenues in the first 3 quarters of 2011 in the aggregate amount of NT\$6.5 billion (which is about US\$217 million). Therefore, Taiwanese legislators have proposed an amendment to **increase the upper limit of these fines.**

Prior to amendment, Article 41 of the FTA read as follows:

“The FTC shall order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct, or take any necessary corrective action within a prescribed period of time; in addition, it may assess upon such enterprise an administrative penalty of **no less than NT\$50,000 but no more than NT\$25 million [which is about US\$1,700 to US\$845,000].** If such enterprise fails to cease therefrom, rectify its conduct, or take the necessary corrective action within the period of time prescribed, the FTC shall continue to order such enterprise to cease therefrom, rectify its conduct, or take any necessary corrective action within a prescribed period of time, and each time may successively assess thereupon an administrative penalty of **no less than NTD 100,000 but no more than NTD 50 million [which is about US\$3,400 to US\$1.69 million]** until the enterprise has ceased therefrom, rectified its conduct, or taken the necessary corrective action.” (Emphasis added.)

After the amendment, legislators added paragraph 2 to Article 41 of the FTA, which raises the maximum penalty permissible to **10% of the enterprise’s annual sales revenue of the previous fiscal year.** The means of calculating the annual sales revenues of those enterprises, the determination of the seriousness of the violations, and the means of calculating fines will be further promulgated by the TFTC.

Maximum penalty permissible is now 10% of the enterprise's annual sales revenue of the previous fiscal year.

Merger Control Corner

List of Recent Deals Not Prohibited

- **November 2011:** WPG Holdings Limited, an electronics (semiconductor) distributor, in its share acquisition of AECO Technology Inc., a distributor of semiconductor peripherals
- **October 2011:** Microsoft’s extraterritorial merger of Skype
- **October 2011:** Joint venture between Kraton Performance Polymers, a U.S. manufacturer of styrenic block copolymers, and Formosa Petrochemical Corporation, Taiwan’s sole listed oil refiner, to build a plant in Taiwan to manufacture styrenic block copolymers



Merger Control Applications Filed Before the Closing of an M&A Deal Fulfill Requirements Under the Fair Trade Act.

Need Further Information?

This newsletter is intended only as a general discussion of these issues. It is not intended and should not be construed as legal advice. We would be pleased to provide additional details or specific advice if desired. For more information regarding these issues, please contact Margaret Huang (margarethuang@lcs.com.tw) at +886-2-2729-8000 ext. 7767 or Christy Lin (christylin@lcs.com.tw) at +886-2-2729-8000 ext. 7238.



2011 Lawyer Monthly - Competition Law
Firm of the Year for Taiwan

2011 Asia Women in Business Law by the
IFLR - Best Firm in Taiwan

LCS & Partners

5F., No. 8, Sec. 5, Xinyi Rd.
Taipei 110, Taiwan

Phone:

+886-2-2729-8000 (ext. 7767 or 7238)

E-mail:

margarethuang@lcs.com.tw
christylin@lcs.com.tw