

The Taiwan Supreme Administrative Court Found Chinese Petroleum Corporation and Formosa Petrochemical's Concerted Actions Violated the Taiwan Fair Trade Act

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On 19 February 2009, the Taiwan Supreme Administrative Court ruled that Taiwan's two largest motor fuel suppliers, Chinese Petroleum Corporation (CPC) and Formosa Petrochemical Corporation (FPC), had engaged in concerted actions against Article 14 of the Taiwan Fair Trade Act (TFTA).

On 14 October 2004, CPC and FPC were fined NT\$6.5 million each by the Taiwan Fair Trade Commission (TFTC) for their concerted actions in concurrently fixing their fuel prices. CPC and FPC appealed the TFTC's decision to the Executive Yuan (the Cabinet) and obtained a "partial" favorable decision in May 2005. The Executive Yuan overturned the TFTC's decision regarding the determination of the amount of penalties imposed on CPC and FPC, but not regarding the findings of the parties' concerted action. The TFTC is required to make another decision within two months. As both CPC and FPC had filed lawsuits with the Administrative Court to appeal against the Executive Yuan's decision, the TFTC decided to suspend the case until the Supreme Administrative Court handed down its judgments in the lawsuits. After reviewing the case at length, the Taiwan Supreme Administrative Court found that CPC and FPC had engaged in concerted actions in violation of Article 14 of the TFTA.

The Taiwan Supreme Administrative Court's judgment is in line with the TFTC's decision that CPC and FPC had adopted "another form of mutual understanding" to engage in concerted actions. Pursuant to Article 7 of the TFTA, "another form of mutual understanding" means a communication of intent, other than a contract or an agreement, whether legally binding or not, that would in effect lead to concerted actions. During the period from 1 April 2002 to 22 September 2004, CPC and FPC had concurrently made their fuel prices the same 15 times. They communicated their intent to adjust fuel prices in advance through a "price announcement ploy," by which one of them would first release news of its intent of price adjustment to test the other's reaction. If the other announced that it would follow suit, the first company would implement the increase, whereas if the second company announced that it would not follow suit, the first company could announce the cancellation of the increase, at no cost to itself and with almost zero risk. The court ruled that these price adjustments were not simply parallel actions by the two companies; they amounted to communications of intent to engage in concerted actions. Such conduct had been sufficient to affect prices and manipulate supply and demand in Taiwan's petroleum products market.

The judgment of the Taiwan Supreme Administrative Court sets a new precedent for the treatment of concerted actions, and protects consumers' interests by discouraging the widespread commercial practice of coordinated price hikes.

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