

# 論公平交易法上的檢舉與 公平交易委員會之不作為\*

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現行公平會訴願會之實務運作中，將公平會對於檢舉之不處分或不受理函覆視為行政處分，可為訴願之標的。惟在檢舉案件與日俱增的情況下，此種實務作法對公平會整體造成了相當大的行政負擔。本文首先檢討公平會（及其訴願會）有關檢舉之實務運作，其次從比較法之觀點探討其他國家或區域關於檢舉之處理情形，最後從法學論理與行政（經濟）效率之觀點分析公平會（及其訴願會）現行檢舉處理實務之問題點。本文以為，無論就比較法或就一般法學理論以觀，公平會或其訴願會都沒有將不處分或不受理函覆視為行政處分之必要；而從行政或經濟效率的觀點上來看，此種實務作法更蘊藏著重大缺失。

**關鍵詞：**公平交易法、公平交易委員會、不作為、訴願、檢舉、檢舉函覆

## 壹、前言

公平交易法（以下，簡稱「公平法」）第二十六條規定，公平交易委員會（以下，簡稱「公平會」）對於違反該法規定而危害公共利益之行為，「得依檢

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# **A Comment on the Taiwan Fair Trade Commission's Reaction to Complaints**

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## **ABSTRACT**

In the practices of the Taiwan Fair Trade Commission (TFTC), TFTC's inaction to complaint by private person(s) for violation of the Fair Trade Law is deemed an administrative action, thus can be appealed to the Administrative Petition Committee for review. This practice has put a large burden on the resources of the TFTC. In this article, based on perspectives from other countries' or areas' practices, on legal reasoning (especially that of administrative law) and on economic efficiency, the author concludes that current practices of TFTC can not be justified and should be abandoned without compensation. By denying a complainant standing to appeal, TFTC will have more discretion in case selection, thereby fulfill its responsibility of sustaining fair and unfettered competition in Taiwan's market more efficiently.

**Key Words:** Fair Trade Law, Fair Trade Commission, Inaction, Administrative Petition, Complaint