

Guidelines on treatment of objects recording confidential communications between an enterprise and an attorney

July 7, 2020
Fair Trade Commission

I. Introduction

With the establishment of the Act on Partial Revision of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 45 of 2019) in June 2019, a program was introduced to the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947; hereinafter referred to as the “Antimonopoly Act”) to determine the rate of reduction of surcharge based upon the degree of voluntary cooperation by enterprises with investigations. As a result, the need of the enterprises to consult with independent attorneys in order to effectively cooperate with the investigation is likely to increase. Therefore, from the perspective of making the new leniency program more effective while substantially protecting confidential legal advice, etc. related to such consultations and ensuring the appropriateness of administrative investigation procedures (Note 1), the Fair Trade Commission has decided to return to the enterprise, without waiting for the closure of the case, the objects recording the contents of the confidential communications between the attorney and the enterprise without the investigators or other staff members engaged in the investigation of the relevant case (hereinafter referred to as the “Investigator, etc.”) having access to the contents of the object as long as satisfaction of certain conditions is confirmed pursuant to the prescribed procedures in the administrative investigation procedures of the Fair Trade Commission (Note 2) in accordance with the Rules on Investigations by the Fair Trade Commission (Fair Trade Commission Rule No. 5 of 2005; hereinafter referred to as the “Investigation Rules”) established pursuant to the provision of Article 76, Paragraph 1 of the Antimonopoly Act (hereinafter referred to as the “Treatment”). These Guidelines have been established in order to clarify the procedures of the Treatment and to ensure transparency of the Treatment and foreseeability of the enterprises.

(Note 1) It is required under Article 76, Paragraph 2 of the Antimonopoly Act to take it into consideration when establishing rules concerning the procedures to handle cases pursuant to the provision of Paragraph 1 of said Article to ensure that proper procedures are performed.

(Note 2) The Fair Trade Commission’s investigation procedures for alleged antitrust cases are classified into two categories: administrative investigation procedures (procedures taken to investigate alleged antitrust cases potentially subject to administrative measure such as a cease and desist order, etc.) and compulsory investigation procedures (procedures taken to investigate alleged antitrust cases potentially subject to prosecution seeking criminal punishment). Of the above two procedures, the Treatment is designed to cover the Fair Trade Commission’s administrative investigation procedures but not to the compulsory investigation procedures.

II. Details of the Treatment (related to Article 23-2 and Articles 23-3 of the Investigation Rules)

The Treatment purports to return the objects recording the confidential communications between an enterprise (Note 3) and an attorney (Note 4) regarding legal advice (hereinafter referred to as the “Specified Communications”) on an act alleged to be a violation to which the leniency program may apply (Note 5) (hereinafter referred to as an “Alleged Act in Violation to Which the Leniency Program may Apply”) immediately without the Investigator, etc. having access to the contents thereof, deeming that detention of them is no longer necessary, when it is confirmed that they are stored appropriately and satisfy certain other conditions.

Such confirmation will be made with respect to an object concerning which the holder of the object requests application of the Treatment in writing when the investigator issues a submission order (referring to the disposition stipulated in Article 47, Paragraph 1, Item 3 of the Antimonopoly Act; hereinafter the same) to the holder thereof (Note 6) (hereinafter the object retained in response to such a request shall be referred to as the “Specified Object ” and the enterprise making such a request as the “Specified Party”) in a case involving an Alleged Act in Violation to Which the Leniency Program may Apply (hereinafter referred to as the “Specified Alleged Violation Case”).

(Note 3) Referring to a constituent enterprise of a trade association that has committed the Alleged Act in Violation to Which the Leniency Program may Apply when it relates to the provision of Article 7-2, Paragraph 1 of the Antimonopoly Act that applies *mutatis mutandis* by replacing the terms in Article 8-3 of the Antimonopoly Act.

(Note 4) Referring to an attorney (including a law firm corporation; hereinafter the same) under the provisions of the Attorney Act (Act No. 205 of 1949) who engages in legal practices independently from the enterprise that committed an Alleged Act in Violation to Which the Leniency Program may Apply. An attorney who is retained by the enterprise (hereinafter referred to an “In-house Attorney”) is not considered as an attorney engaging in legal practices independently from the enterprise; provided, however, that when it is clear that, as triggered by the discovery of an Alleged Act in Violation to Which the Leniency Program may Apply, etc., the attorney is no longer under the directions, orders and supervision of the retaining enterprise and engaging in legal practice independently in accordance with a written instruction from it, such attorney shall be considered, as from the time such direction is issued, to come under the case of engaging in legal practices independently. Further, the foreign lawyers and registered foreign lawyers (including the corporations of the registered foreign lawyers) provided for in the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers (Act No. 66 of 1986) (hereinafter collectively referred to as the “Foreign Lawyers, etc.”) are not included in the scope of attorneys under Article 23-2, Paragraph 1 of the Investigation Rules.

(Note 5) Referring to an act of violation stipulated in Article 7-2, Paragraph 1 of the Antimonopoly

Act to which the new leniency program may apply (including the case where the provision is applicable *mutatis mutandis* by replacing the terms in Article 8-3 of the Antimonopoly Act).

(Note 6) Limited to the enterprise that committed an Alleged Act in Violation to Which the Leniency Program may Apply or an officer or employee thereof.

1. Objects recording contents of the Specified Communications

The Specified Communications refer to confidential consultations with an attorney for legal advice on an Alleged Act in Violation to Which the Leniency Program may Apply by the enterprise that engaged in such Alleged Act in Violation to Which the Leniency Program may Apply, and the confidential replies provided by the attorney.

When such an enterprise is a juridical person, the confidential communications between the attorney and an officer or employee thereof (hereinafter referred to as the “Officer, etc.”) who, at the time of the relevant communications, assumed the duty to consult with an attorney on behalf of the enterprise (including confidential communications between the attorney and an Officer, Etc. of the enterprise regarding an Alleged Act in Violation to Which the Leniency Program may Apply that were transmitted through a person who assumed the duty to consult with the attorney on behalf of the enterprise) are Specified Communications.

The Treatment may be applicable to those objects that record the contents of the Specified Communications, which are documents, etc. the enterprise or the attorney who had been consulted by the enterprise prepared or obtained on or after the day on which the Specified Communications were made (including those that had already been prepared or obtained at the time the first of such Specified Communications was made and actually used in such Communications) or a collection of such documents (Note 7).

Specific examples include the following:

- consultation document from a Specified Party to the attorney;
- responding document from the attorney to the Specified Party;
- report stating the legal advice based upon the internal investigation performed by the attorney; and
- memo of an internal meeting that states the discussion with the attorney on the legal advice at an internal meeting that the attorney attended, etc.

(Note 7) The documents that mainly state the facts, such as the report on an internal questionnaires, records of interview on the Officers, etc. regarding an Alleged Act in Violation to Which the Leniency Program may Apply, are not included.

2. Appropriate custody (related to Article 23-3, Paragraph 1 of the Investigation Rules)

For an object to be returned through the Treatment, it is necessary that they are kept in appropriate custody. Specifically, an object is considered to have been in appropriate custody when all of the requirements below are satisfied:

(1) Indication (related to Article 23-3, Paragraph 1, Item 4 and Item 5 of the Investigation Rules)

The Specified Object has an indication on its surface or on other easily visible place to show that it is an object recording the contents of Specified Communications (when the object is stored in an collection of more than one documents, etc. bound in one folder, etc., a label for identification of such nature is indicated on such a folder, etc.).

Examples of such indications include:

- There is an indication of “公取審査規則特定通信”(meaning “Specified Communications under JFTC Investigation Rules”) on the spine of the folder holding the documents, etc. recording the contents of the Specified Communication; or
- There is an indication of “公取審査規則第23条の2第1項該当”(meaning “Document under Article 23-3, Paragraph 1 of JFTC Investigation Rules”) on the front page of a documents recording the contents of Specified Communications.

(2) Place of storage (related to Article 23-3, Paragraph 1, Item 5 of the Investigation Rules)

The objects are stored at a specific place of storage managed by the enterprise (limited to those places managed by the division or Officer, etc. that handles the affairs for consulting with the attorneys), and the place where the Specified Objects are stored and the place where items other than the Specified Objects are stored, are separated visually.

Examples of such manner of storage include the following:

- The object recording the contents of the Specified Communications is stored in a shelf managed by the legal affairs division with an indication that objects recording the contents of the Specified Communications are stored therein, and no objects other than the objects recording the contents of the Specified Communications are stored at the same shelf.

(3) Scope of the persons who know the contents (related to Article 23-3, Paragraph 1, Item 5 of the Investigation Rules)

The scope of the persons who know the contents of the Specified Objects is restricted to those who need to know (the persons who assume or assumed the duty to consult with the attorneys on behalf of the enterprise, etc. (Note 8)).

Examples of such scope of persons know the contents include the following:

- The scope of the persons who knows the contents of the object recording the contents of the Specified Communications is limited to the Officers, Etc. of the legal affairs division.

(Note 8) Including the Officers, etc. of the enterprise related to an Alleged Act in Violation to Which the Leniency Program may Apply who consulted with an attorney through a person who assumed the duty to consult with an attorney on behalf of the enterprise.

3. Submission of the “application” and the “log”

(1) Submission of the “application” (related to Article 23-2, Paragraph 1 of the Investigation Rules)

The holder of an object for which the application of the Treatment is sought shall submit a

document to request application of the Treatment (hereinafter referred to as the “Application”) to the investigator when a submission order is issued with respect to the object for which the application of the Treatment is sought.

(2) Submission of the “log” (related to Article 23-2, Paragraph 2 of the Investigation Rules)

A Specified Party shall submit to the Fair Trade Commission (Determination Officer and the investigator) a document stating, for each Specified Communication, the matters under (a) through (f) below regarding the Specified Object (when more than one document, etc. are stored as a collection of documents bound in a folder, etc., such documents, etc.) (such a document referred to as the “Log” hereinafter) within two weeks from the day on which the submission order was issued thereto, except to the extent that there are extraordinary circumstances, such as natural disasters, that prevent her from submitting the Log within the prescribed period:

- a. Title of the Specified Object;
- b. Date on which the Specified Object was prepared or obtained;
- c. Name of the person who engaged in the Specified Communications, and the names of the organization and the division within the organization to which the person belonged to and the position thereof at the time of the Specified Communications;
- d. The name of the person with whom the Specified Object was shared, and the names of the organization and the division within the organization to which the person belonged to and the position thereof at the time the Specified Object was shared;
- e. The place where the Specified Object is stored; and
- f. Outline of the Specified Object (background of preparation or obtainment, etc.).

4. Other

- (1) A submission order shall not be issued with respect to the object recording the contents of confidential communications between a Specified Party and a Foreign Lawyer, etc. regarding legal advice related to the foreign competition laws regarding actions to be taken in relation to the foreign competition laws relevant to a Specified Alleged Violation Case, unless such object contains primary materials or fact finding materials (IV, 2. (2) b. (a) and (b) mentioned below) or is otherwise considered necessary for the investigation of the relevant case.
- (2) Even if an object for which the application for the Treatment has been made had been submitted to a certain other administrative organ, etc. for the purpose of investigation thereof, etc., it has no effect on the procedures of the Treatment, and does not affect satisfaction of requirements for the Treatment.

Further, even if the contents of an object for which the application of the Treatment has been made have been shared with a Foreign Lawyer, etc., when it is found necessary to share in order to make the new leniency program more effective, and when it is found that proper measures to keep the contents of the Specified Communication confidential has been

implemented, it does not affect satisfaction of requirements for the Treatment.

III. Procedures by the investigator (related to Article 23-2, Paragraph (1) of the Investigation Rules)

When there has been an application to request the Treatment in the course of a submission order, the investigator will confirm the indication and the situation of custody of the object for which the request was made. When the investigator finds that the requirements under II. 2. (1) and (2) above are visually satisfied, the investigator shall issue the submission order on such object in response to the Application prescribed in II. 3. (1) above with respect thereto after placing it in an envelope, etc. and sealing it.

The investigator, promptly after issuing the submission order (or when the submission order was issued on the occasion of an on-site inspection (referring to the disposition set forth in Article 47, Paragraph (1), Item iv of the Antimonopoly Act; hereinafter the same), after completion of such on-site inspection), shall transfer the object to the Determination Officer without breaking the seal of the envelope together with such Application.

IV. Determination procedures, etc. (related to Article 23-3 and Article 23-4 of the Investigation Rules)

1. Designation of Determination Officer, etc.

The Fair Trade Commission shall designate a staff member of the Secretariat of the General Secretariat of the Fair Trade Commission as a Determination Officer for each Specified Alleged Violation Case.

The Fair Trade Commission shall not designate any staff member who conducted the administrative affairs pertaining to investigations into the relevant Specified Alleged Violation Case as Investigator, etc. as a Determination Officer, nor shall it cause any staff member who has been designated as the Determination Officer for the Specified Alleged Violation Case to be involved in the investigation of the same Specified Alleged Violation Case.

2. Determination procedures

The Determination Officer shall break the seal of the envelope containing the Specified Object and perform the procedures of confirmation set forth in (1) and (2) below (hereinafter referred to as the "Determination Procedures"). The Determination Officer shall further request the Specified Party to submit other materials or otherwise extend necessary cooperation when it is considered necessary for the purpose of performance of the Determination Procedures.

The Investigator, etc. shall not inspect or copy the Specified Object(excluding, however, an Specified Object that includes any Ineligible Documents, Etc.(to be defined hereinbelow) submitted during the confirmation procedures under (2) b.) while the confirmation procedures are being under way, and thereafter when the confirmation is made, with respect to the Specified Object.

(1) Primary determination procedures

The Determination Officer shall perform the confirmation procedures under a. through c. below on the Specified Object in principle within two weeks from the day on which the submission order was issued with respect thereto.

a. Confirmation of the descriptions on the Application:

To confirm that the descriptions made on the Application are without error.

b. Confirmation of submission of the Log:

To confirm that the Specified Party submitted the Log to the Fair Trade Commission (Determination Officer and the investigator) within two weeks from the day on which the submission order was issued thereon, except to the extent that there are extraordinary circumstances, such as natural disasters.

c. Confirmation of appropriate custody:

To confirm that the requirements under II. 2. (1) above are satisfied with respect to the Specified Object.

(2) Secondary determination procedures

The Determination Officer shall perform the confirmation procedures under a. through e. below on the Specified Object concerning which the matters under (1) a. through c. are confirmed in principle within six weeks from the day on which the primary determination procedures are completed.

a. Confirmation of the Specified Object recording the contents of the Specified Communications:

To confirm that the Specified Object records the contents of the Specified Communications.

b. Confirmation of non-inclusion of ineligible documents, etc.:

To confirm that the Specified Object does not include any documents, etc. whose recorded contents do not come within the scope of the Specified Communications (hereinafter referred to as the "Ineligible Documents, etc.") and that, if any Ineligible Documents, etc. are included, copies of such Ineligible Documents, etc. are submitted or otherwise provided to the Fair Trade Commission (the Determination Officer) by the Specified Party.

Examples of the Ineligible Documents, etc. include the following:

(a) Primary materials:

Pocketbooks or notebooks of the Officers, etc., memos stating the details of the meetings, documents approving the business trips, etc.

(b) Fact-finding materials

Records of interview on the Officers, etc. who are considered to be involved in the Alleged Act in Violation to Which the Leniency Program may Apply, the report on an internal questionnaires, etc. regarding an Alleged Act in Violation to Which the Leniency Program may Apply.

(c) Documents, etc. stating the contents of the legal advice regarding other laws and ordinances, etc.

Documents, etc. stating about the consultations that the Specified Party made to the attorneys, and the responses given from such attorneys, regarding the legal advice on the provisions of laws and ordinances other than the Antimonopoly Act or provisions of the Antimonopoly Act that are irrelevant to the Alleged Act in Violation to Which the Leniency Program may Apply.

- c. Confirmation of non-inclusion of communications regarding obstruction of inspection, etc.:
To confirm that the Specified Object is not related to commitment, or facilitation of commitment, of a violation to which the leniency program may apply or commitment of obstruction of inspection or other illegal conducts.
- d. Confirmation of appropriate custody:
To confirm that the Specified Object satisfies the requirements under II. 2. (2) and (3) above.
- e. Confirmation of the contents of the Log:
To confirm that the contents of the Log do not contain misrepresentations.

3. Confirmation with the Specified Party, etc.

When it is not clear whether any of the matters under 2. (1) a. through c. or 2. (2) a. through e. are met, the Determination Officer shall advise the Specified Party to such effect and confirm how it will respond to the treatment of the relevant Specified Object (including treatment of any misrepresentation contained therein). Such confirmation, etc. shall be made within the prescribed period of the determination procedures.

V. Return procedures, etc. (related to Article 23-3 and Article 23-4 of the Investigation Rules)

1. Return procedures

- (1) When the matters under IV. 2.(1) a. through c. and IV. 2. (2) a. through e. are confirmed with respect to the Specified Object, the Determination Officer shall place it in an envelope, etc. and seal it.
- (2) Regarding the Specified Object under (1) above, notification shall be sent to the Specified Party to advise that the confirmation under (1) has been made and the relevant Specified Object shall be immediately returned, deeming that detention of it is no longer necessary (Note 9).

(Note 9) When the Specified Object is returned as set forth in (2) above although it contains any Ineligible Documents, etc. concerning which the investigator believes that submission of copies of the primary materials (IV. 2. (2) b. (a)) will not suffice but that the originals thereof are necessary for elucidation of the reality of the Specified Alleged Violation Case, the submission order for those originals shall be issued by the investigator after requesting the Specified Party to separate such original documents from the rest.

2. Transfer to the investigator, etc.

(1) Transfer to the investigator

When, as a result of the confirmation, etc. under IV. 3. , any of the matters under IV. 2. (1) a. through c. or IV.2. (2) a. through e. cannot be confirmed, the Determination Officer shall transfer to the investigator the Specified Object concerning which such confirmation is not made.

(2) Notification to the Specified Party, etc.

When the Specified Object was transferred to the investigator as set forth in (1) above, the Determination Officer shall notify the Specified Party to such effect together with the reason therefor without delay.

3. Responses to request for return by the Specified Party

(1) Request for return

When the Specified Party specifies the identity of the Specified Object, the reason, etc. in writing and requests for return of such Specified Object that was transferred from the Determination Officer to the investigator, the investigator shall examine the necessity to retain it.

(2) Return

The Specified Object which it is deemed no longer necessary to retain as a result of the examination under (1) above shall be promptly return to the Specified Party.

(3) Notification to Specified Party

When it is found necessary to retain the Specified Object as a result of the examination under (1) above, the Specified Party shall be notified in writing without delay that the request for return made thereby has been rejected. The notification of rejection shall include a statement to advise that an objection may be raised against the rejection of the request pursuant to the provision of Article 22, Paragraph 1 of the Investigation Rules or an action may be initiated for revocation of administrative disposition pursuant to the Administrative Case Litigation Act (Act No. 139 of 1962).

VI. Procedures for inspection or copying (related to Article 23-5 of the Investigation Rules)

When a request is made by the Specified Party to inspect or copy a Specified Object, it shall be permitted to do so in the presence of the Determination Officer or an assistant who helps such Officer's performance of duties the day after or later of the submission order as designated through arrangement of the date and at a place designated by the Determination Officer within the extent no inconvenience is caused thereby to the investigation of the case or confirmation by the Determination Officer in the determination procedures.

VII. Treatment of electronic data

Electronic data (including data of electronic mails, etc.; hereinafter the same) for which the application of the Treatment is sought (hereinafter referred to as the “Specified Data”) shall be treated in the same way as objects in principle; provided, however, that, considering the nature of electronic data, the requirements set forth under 1. through 5. below shall be required for appropriate custody, etc. thereof.

1. Appropriate custody

Electronic data are considered to have been in appropriate custody if all of the requirements below are satisfied.

(1) Indication

The file names of the Specified Data (subjects in the case of electronic mails) include indications to show that they are objects recording the contents of the Specified Communications.

Examples of such indications include the following:

- There is an indication of “公取審査規則特定通信”(meaning “Specified Communication under JFTC Investigation Rules”) included in the file name of electronic data file recording the contents of the Specified Communications, or
- There is an indication of “公取審査規則第23条の2第1項該当”(meaning “Document under Article 23-2, Paragraph 1 of JFTC Investigation Rules”) included in the subject of electronic mail recording the contents of the Specified Communications.

(2) Place of storage

The Specified Data are stored at a specific place of storage managed by the enterprise (limited to those places managed by the division or Officer, etc. that handles the affairs for consulting with the attorneys) (or managed in specific mail accounts in the case of electronic mails), and the place of storage of the Specified Data and the place of storage of data other than the Specified Data are separated by the name of the folders, etc. used as the place of storage of data.

Examples of such manner of storage include the following:

- The Specified Data are stored in a folder managed by the legal affairs division with an indication that electronic data recording the contents of the Specified Communication are stored therein, and no electric data other than those recording the contents of Specified Data are stored in the same folder.

(3) Scope of the persons who know the contents

The scope of the persons who know the contents of the Specified Data is restricted to those who need to know (the persons who assume or assumed the duty to consult with the attorneys on behalf of the enterprise, etc. (Note 10)).

Examples of such scope of persons who know the contents include the following:

- The scope of the persons who know the contents of the electronic data recording the Specified Communications is limited to the Officers, etc. of the legal affairs division.

(Note 10) Including the Officers, etc. of the enterprise related to an Alleged Act in Violation to Which the Leniency Program may Apply who consulted with an attorney through a person who assumed the duty to consult with an attorney on behalf of the enterprise.

2. Submission of the Application and the Log

(1) Submission of the Application

The holder of a recording medium (the client's PC where applicable; hereinafter the same) containing a copy of the Specified Data for which the application of the Treatment is sought shall submit an Application to the investigator when a submission order is issued thereto with respect to such recording medium.

(2) Submission of the Log

Following receipt of the order to submit the recording medium to which the Specified Data are copied, the Specified Party shall receive a recording medium which is a duplicate of the such recording medium and submit to the Fair Trade Commission (Determination Officer and the investigator) the Log, for each Specified Communication, that states the matters set forth in a. through f. below regarding the relevant Specified Data, within two weeks from the day of receipt of the recording medium, except to the extent that there are extraordinary circumstances, such as natural disasters, that prevent her from submitting the Log within the prescribed period:

- a. File name of the Specified Data (subject in the cases of the electric mails);
- b. Date on which the Specified Data were prepared or obtained (in the case of an electric mail, the date on which it was sent or received);
- c. Name of the person who engaged in the Specified Communications, and the names of the organization and the division within the organization to which the person belonged to and the position thereof at the time of the Specified Communications (in the case of an electric mail, the names of the sender and the recipient, etc.);
- d. The name of the person with whom the Specified Data were shared, and the names of the organization and the division within the organization to which the person belonged to and the position thereof at the time the Specified Data were shared (in the case of an electric mail, the names of the sender and the recipient and the co-recipients, etc.);
- e. The place where the Specified Data were stored; and
- f. Outline of the Specified Data (background of preparation or obtainment, etc.).

3. Procedures, etc. to be taken by the investigator

When it is recognized that the requirements under 1. (1) and (2) are satisfied with respect to the Specified Data, the investigator will issue a submission order regarding such Specified Data after copying the same to a recording medium that is not used for recording any other electronic data (Note 11). In this case, the investigator shall place such recording medium in an envelope, etc.

and seal it.

The investigator, without delay after issuing the submission order (or when the submission order was issued on the occasion of an on-site inspection, after completion of such on-site inspection), shall transfer such recording medium without breaking the seal of the envelope, etc. to the Determination Officer together with the Application submitted by the Specified Party.

(Note 11) When copying other electronic data, there may be cases where the data cannot be copied separately from the Specified Data. In such a case, the Specified Party shall submit, together with the Application, a document listing the folder in which the Specified Data are stored. The Investigator, etc. shall not inspect or print the Specified Data during the period of the determination procedures.

4. Determination procedures

The determination procedures of the Specified Data shall be performed in the same manner as set forth in IV. 2. above in principle, and shall also be performed as set forth in (1) through (4) below.

(1) The Determination Officer shall conduct the primary determination procedures in principle within two weeks from the day on which the recording media to which the Specified Data were copied was received by the Specified Party.

(2) When it is considered necessary for the purpose of the determination procedures, the Determination Officer will request the Specified Party to submit the Specified Data rendered in a viewable form (hereinafter referred to as the “Viewable Documents, etc.”). For the purpose of submission of the same, the investigator will issue a submission order with respect to the Viewable Documents, etc., place such Viewable Documents, etc. in an envelope, etc. and seal it, then promptly transfer it to the Determination Officer without breaking the seal.

(3) When it is considered necessary for the purpose of the determination procedures, the Determination Officer will request the Specified Party to submit the information to be used for identification of the Specified Data (hash value (Note 12), message ID of the electric mail, volume of the electronic data, etc.).

(4) When the recording medium to which the Specified Data are copied contains electronic data corresponding to the Ineligible Documents, etc. (hereinafter referred to as the “Ineligible Data”), the Determination Officer will confirm the matters set forth in a. or b. below in lieu of confirmation of submission of the copies of the Ineligible Documents, etc.:

a. To confirm that electronic data which are ensured to be identical with the relevant Ineligible Data were submitted.

For the purpose of submission of such Identity-ensured Data, the Determination Officer shall confirm that a document stating that they are identical with the Ineligible Data has been submitted.

b. To render only the Ineligible Data, recorded on the recording medium to which the Specified

Data were copied, to a format that may be inspected and printed by the Investigator, etc. (limited to the cases where the Specified Party offered to choose b. in lieu of submission, etc. pursuant to a. above).

(Note 12) Hush value is a value obtained by certain formula known as a hush function. As the same value is obtained from the same electronic data, it will be used for the purpose of confirming the identity of the electronic data.

5. Return procedures

- (1) When the matters are confirmed in a similar manner as set forth in IV. 2. in the determination procedures of the Specified Data, and the matters under 4. (2) through (4) above are confirmed, with respect to the recording media and the Viewable Documents, etc., the Determination Officer shall place them in an envelope, etc. and seal it.
- (2) Regarding the recording media and the Viewable Documents, etc. under (1) above, notification shall be sent to the Specified Party to advise that the confirmation under (1) has been made and the relevant recording media and the Viewable Documents shall be promptly returned, deeming that detention of them is no longer necessary.

VIII. Consideration to be given to the object to which the Treatment may apply when hearing statements

During the process for hearing of the statements (referring to hearing of statement on a voluntary basis and the interrogation provided for in Article 47, Paragraph 1, Item 1 of the Antimonopoly Act), the Investigator, Etc. engaged in the investigation of a Specified Alleged Violation Case, in principle, shall not hear from subject persons about the contents of the Specified Communications contained in the objects whose determination procedures are still pending or in the objects that were already returned through the Treatment.