

The Fair Trade Commission's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations
(Tentative translation)

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Fair Trade Commission

The Fair Trade Commission (hereinafter referred to as "FTC") will investigate and file an accusation against criminal cases (meaning the cases pertaining to the crimes prescribed under Articles 89 through 91 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as "the Act"); hereinafter the same shall apply.) in line with the following policy on and after December 25, 2020, the day on which the amendment regarding the leniency program prescribed in the Act shall be put into force. .

1. The Policy on Criminal Accusation

(1) The FTC will actively accuse to seek criminal penalties on the following cases:

- a. Vicious and serious cases which are considered to have wide spread influence on people's livings, out of those violations which substantially restrain competition in certain areas of trade such as price-fixing cartels, supply restraint cartels, market allocations, bid-rigging, group boycotts, private monopolization and other violation.
- b. Among violation cases involving those firms or industries who are repeat offenders or those who do not abide by the elimination measures, those cases for which the administrative measures of the FTC are not considered to fulfill the purpose of the Act.

(2) However, the FTC will not file accusations against:

- a. The first enterprise that solely reported facts and submitted materials concerning the immunity from the surcharge before the investigation start date. (meaning the enterprise that reported facts and submitted materials pursuant to the provision of Article 7-4 (1) of the Act. However, this provision shall not apply to the enterprise who is found to be fallen under any of the paragraphs of Article 7-6 (excluding items (iii) and (vii)) of the Act; (a) the fact reported or the

materials submitted by the said enterprise contained false information, (b) the said enterprise failed to report the facts or submit the materials, or reported false facts or submitted false materials in response to the additional requests, (c) the said enterprise coerced another enterprise to commit the violation or blocked another enterprise from ceasing to commit of the violation, (d) the said enterprise blocked another enterprise from reporting facts, submitting materials or applying for the conference provided in paragraph (1) of the Article 7-5 of the Act, or (e) the said enterprise disclosed the fact that the said enterprise reported facts and submitted materials to a third party.)

b. The first enterprise that reported facts and submitted materials concerning the immunity from the surcharge before the investigation start date in concert with another enterprise. (meaning the enterprise that reported facts and submitted materials pursuant to the provision of Article 7-4 (4) and (1) of the Act. However, this provision shall not apply to the enterprise who is found to be fallen under any of the paragraphs of Article 7-6 (excluding items (iii) and (vii)) of the Act; (a) the fact reported or the materials submitted by the said enterprise contained false information, (b) the said enterprise failed to report the facts or submit the materials, or reported false facts or submitted false materials in response to the additional requests, (c) the said enterprise coerced another enterprise to commit the violation or blocked another enterprise from ceasing to commit of the violation, (d) the said enterprise blocked another enterprise from reporting facts, submitting materials or applying for the conference provided in paragraph (1) of the Article 7-5 of the Act, or (e) the said enterprise disclosed the fact that the said enterprise reported facts and submitted materials to a third party.)

c. The officer, employee, or other person of the enterprise fallen under a. and b. who committed the violation of the Act and is deemed to be in a circumstance to be treated as same as the said enterprise, regarding the said enterprise's report of facts and submission of materials to the FTC, response to the investigation by the FTC following the said submission, and others.

(Note) "The investigation start date" means the date when the FTC initiates its on-the-spot inspection, official inspection and search, etc., regarding the case relating to the violation.

2. Compulsory Investigation of Criminal Cases

The FTC will assign the staff members for criminal investigation to investigate the suspicious case of the violation of the Act where there is a considerable reason for suspicion of being fallen under 1. (1) a. or b. above. As the result of the criminal investigation, where it is convinced that a criminal offense fallen under 1. (1) a. or b. above has taken place, FTC files an accusation.

3. The Conference of Criminal Accusation

At the time of consideration of criminal accusations, in order to ensure smooth and appropriate criminal accusation, the FTC with the prosecutorial authorities will hold “the Conference of Criminal Accusation” consisting of prosecutors under the Prosecutor in Finance and Economic Article of Supreme Public Prosecutors Office (the prosecutorial authorities side) and the Director General and officers of the Compulsory Investigation Department (the FTC side), and exchange opinions and information on concrete problems of each of the said case.