

# **Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of April 14, 1947)**

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### **Chapter I General Provisions**

Article 1 The purpose of this Act is to promote fair and free competition, stimulate the creative initiative of enterprise, encourage business activity, heighten the level of employment and actual national income, and thereby promote the democratic and wholesome development of the national economy as well as secure the interests of general consumers by prohibiting private monopolization, unreasonable restraint of trade and unfair trade practices, preventing excessive concentration of economic power and eliminating unreasonable restraints on production, sale, price, technology, etc. , and all other unjust restrictions on business activity through combinations, agreements, etc. .,

Article 2 (1) The term "enterprise" as used in this Act means a person who operates a commercial, industrial, financial or other business. Any officer, employee, agent or other person who acts for the benefit of any enterprise is deemed to be an enterprise with regard to the application of the provisions of the following paragraph or of Chapter III.

(2) The term "trade association" as used in this Act means any combination or

federation of combinations of two or more enterprises having as its principal purpose the furtherance of their common interests as enterprise and includes the following; provided, however, that a combination or federation of combinations of two or more enterprises which has capital or contributions made by the constituent enterprise, and whose principal purpose is to operate and which is actually operating a commercial, industrial, financial or other business for profit is not included:

- (i) any incorporated association or other association of which two or more enterprises are members (including the equivalent thereof)
  - (ii) any incorporated foundation or other foundation for which two or more enterprises control the appointment and dismissal of officers or managers, the management of business or continuation of its existence
  - (iii) any partnership for which two or more enterprises are partners, or any contractual combination of two or more enterprises.
- (3) The term "officer" as used in this Act means an officer, an executive officer, a managing member, an inspector, an auditor, or an equivalent thereof, a manager, or a chief of business of the main or branch office.
- (4) The term "competition" as used in this Act means a state in which two or more enterprises, within the normal scope of their business activities and without making any material change to the facilities for, or kinds of, such business activities, engage in, or are able to engage in, any act listed in the following items.
- (i) supplying the same or similar goods or services to the same user
  - (ii) receiving supplies of the same or similar goods or services from the same supplier
- (5) The term "private monopolization" as used in this Act means such business activities, by which any enterprise, individually or by combination, in conspiracy with other enterprises, or by any other manner, excludes or controls the business activities of other enterprises, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade.
- (6) The term "unreasonable restraint of trade" as used in this Act means such business activities, by which any enterprise, by contract, agreement or any other means irrespective of its name, in concert with other enterprises, mutually restrict or conduct their business activities in such a manner as to fix, maintain or increase prices, or to limit production, technology, products, facilities or counterparties, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade.
- (7) The term "monopolistic situation" as used in this Act means circumstances in which each of the following market structures and negative effect in the market exist in any particular field of business when the aggregate total value

(this term refers to the prices of the relevant goods less an amount equivalent to the amount of taxes levied directly on such goods) of goods of the same description (including goods capable of being supplied without making any material change to the facilities for, or kinds of, such business activities; hereinafter referred to as "Particular Goods" in this paragraph) and those of any other goods having an extremely similar function and utility thereto, which are supplied in Japan (excluding those exported), or the total value (this term refers to the prices of the relevant services less an amount equivalent to the amount of taxes levied on the recipient of such services with respect thereto) of services of the same description which are supplied in Japan, during the latest one-year period designated by Cabinet Order, exceeds one hundred billion yen:

- (i) a single enterprise' share of a field of business (meaning, out of the aggregate volume (if calculation in terms of volume is not appropriate, out of the aggregate value; hereinafter the same applies in this item) of the Particular Goods and any other goods with an extremely similar function and utility that are supplied in Japan (excluding those exported), or out of the aggregate volume of the services that are supplied in Japan, the ratio of Particular Goods and any other goods with an extremely similar function and utility or services that are supplied by the enterprise; hereinafter the same applies in this item) exceeding one-half or two enterprise' combined share of a field of business exceeding three-fourths during the relevant one-year period.
  - (ii) the existence of conditions that make it extremely difficult for any other enterprise to newly enter the relevant particular field of business.
  - (iii) the existence of a remarkable increase or of a slight decrease in the price of the Particular Goods or services supplied by the relevant enterprise during a considerable period of time in light of the changes in supply and demand, and changes in the cost of supply, for the Particular Goods or services, and the enterprise falling under any of the following items during the period.
    - (a) that the enterprise has made a profit at a rate far exceeding the profit rate specified by Cabinet Order as the standard for the business type specified by Cabinet Order to which the relevant enterprise belongs
    - (b) that the enterprise has expended selling and general administrative expenses which are considered to be far exceeding the standard selling and general administrative expenses for the field of business to which the relevant enterprise belongs
- (8) If a change in economic conditions results in an extreme change in domestic shipments from producers and wholesale prices, the amount in the preceding paragraph is separately provided for by Cabinet Order, in consideration of such conditions.

- (9) The term "unfair trade practices" as used in this Act means an act falling under any of the following items:
- (i) engaging, without justifiable grounds, in any of the following acts, in concert with a competitor:
    - (a) refusing to supply to a certain enterprise or restricting the quantity or substance of goods or services supplied to a certain enterprise
    - (b) refusing to supply to a certain enterprise, or to restrict the quantity or substance of goods or services supplied to a certain enterprise
  - (ii) unjustly and continually supplying goods or services at a price applied differentially between regions or between parties, thereby tending to cause difficulties to the business activities of other enterprise
  - (iii) without justifiable grounds, continuously supplying goods or services at a price far below the cost incurred to supply them, thereby tending to cause difficulties to the business activities of other enterprises
  - (iv) supplying goods to another party who purchases the relevant goods from oneself while imposing, without justifiable grounds, one of the restrictive terms listed below:
    - (a) causing the party to maintain the selling price of the goods that one has determined, or otherwise restricting the party's free decision on selling price of the goods
    - (b) having the party cause an enterprise that purchases the goods from the party maintain the selling price of the goods that one has determined, or otherwise causing the party to restrict the relevant enterprise's free decision on the selling price of the goods.
  - (v) engaging in any act specified in one of the following by making use of one's superior bargaining position over the counterparty unjustly, in light of normal business practices:
    - (a) causing the counterparty in continuous transactions (including a party with whom one newly intends to engage in continuous transactions; the same applies in (b) below) to purchase goods or services other than those to which the relevant transactions pertain
    - (b) causing the counterparty in continuous transactions to provide money, services or other economic benefits
    - (c) refusing to receive goods in transactions with the counterparty, causing the counterparty to take back such goods after receiving them from the counterparty, delaying payment to the counterparty or reducing the amount of payment, or otherwise establishing or changing trade terms or executing transactions in a way disadvantageous to the counterparty
  - (vi) any act falling under any of the following items, which tends to impede fair competition and which is designated by the Fair Trade Commission, other than the acts listed in the preceding items:

- (a) unjustly treating other enterprise in a discriminatory manner
- (b) engaging in transactions at an unjust price
- (c) unjustly inducing or coercing the customers of a competitor to deal with one
- (d) dealing with another party on such conditions that will unjustly restrict the business activities of the counterparty
- (e) dealing with the counterparty by making use of one's superior bargaining position unjustly
- (f) unjustly interfering with a transaction between an enterprise in competition with one in Japan or a corporation of which one is a shareholder or an officer and another transaction counterparty; or, if such enterprise is a corporation, unjustly inducing, instigating or coercing a shareholder or officer of such corporation to act against the corporation's interests.

**Chapter II Private Monopolization and Unreasonable Restraint of Trade**

Article 3 An enterprise must not effect private monopolization or unreasonable restraint of trade.

Article 4 and Article 5 Deleted.

Article 6 An enterprise must not enter into an international agreement or an international contract which contains such matters which fall under unreasonable restraint of trade or unfair trade practices.

Article 7 (1) Whenever an act in violation of the provisions of Article 3 or the preceding Article occurs, the Fair Trade Commission may, pursuant to the procedures provided in Section 2 of Chapter VIII, order the relevant enterprise to cease and desist the relevant act, to transfer a part of the relevant enterprise's business, or to take any other measures necessary to eliminate the act in violation of the provisions.

(2) Whenever the Fair Trade Commission finds it to be particularly necessary, even if an act in violation of the provisions of Article 3 or the preceding Article has already ceased to exist, the Fair Trade Commission may, pursuant to the procedures provided for in Section 2 of Chapter VIII, order the following person to take measures to make public that the act has been discontinued and to take any other measures necessary to ensure elimination of the relevant act; provided, however, that this does not apply if five years have passed since the date of discontinuation of the relevant act.

(i) enterprise who committed the relevant act

(ii) if the enterprise who committed the relevant act is a juridical person, any juridical person surviving, or established as a result of the merger the enterprise ceased to exist

(iii) if the enterprise who committed the relevant act is a juridical person, any juridical person who has acquired all or part of the business involving the

- relevant act from the enterprise by virtue of a company split
- (iv) any enterprise who has acquired all or part of the business involving the relevant act from the enterprise who committed the relevant act

Article 7-2 (1) If an enterprise unreasonably restrains trade or enters into an international agreement or an international contract containing particulars that fall under unreasonable restraint of trade in a category under any of the following items, the Fair Trade Commission must order the enterprise, pursuant to the procedures as provided in Section 2 of Chapter VIII, to pay to the national treasury a surcharge of an amount equivalent to ten percent (three percent for a retail business, or two percent for a wholesale business) of the amount of sales from the relevant goods or services (or of the purchase amount of the goods or services, calculated using the method provided by Cabinet Order, if the relevant act involves being supplied goods or services), calculated using the method provided by Cabinet Order, for the period from the date on which the enterprise began implementing the act in violation in its business activities to the date on which it stopped implementing the act in violation in its business activities (if the period exceeds three years, during the three years preceding the date on which the business activities constituting the relevant act were discontinued; hereinafter referred to as "Period of Implementation"); provided, however, that if the amount thus calculated is less than one million yen, the Commission may not order the payment of such a surcharge.

- (i) those related to the price of goods or services;
  - (ii) those that substantially restrain any of the following with respect to goods or services and thereby affecting their price:
    - (a) supply or purchase volume
    - (b) market share
    - (c) transaction counterparties
- (2) The provisions of the preceding paragraph apply mutatis mutandis to when an enterprise effects private monopolization (limited to that arising from the control of the business activities of other enterprise) that falls under either of the following items with respect to goods or services supplied by the relevant other enterprise (hereinafter referred to as "Controlled Enterprise" in this paragraph). In this case, the term "the amount of sales from the relevant goods or services (or of the purchase amount of the goods or services, calculated using the method provided by Cabinet Order, if the relevant act involves being supplied goods or services), calculated using the method provided by Cabinet Order" in the preceding paragraph is deemed to be replaced with "the amount of sales from the relevant goods or services supplied by the relevant enterprise to the Controlled Enterprise (including goods or services necessary for the Controlled Enterprise to supply the goods or services in the particular field of

trade related to the relevant act) and of the goods or services supplied by the enterprise in the particular field of trade (excluding those supplied to Controlled Enterprise) calculated using the method provided by Cabinet Order," and the term "(three percent for a retail business, or two percent for a wholesale business)" is deemed to be replaced with "(three percent if the enterprise engages in retail business or two percent if the enterprise engages in wholesale business)."

(i) that involving prices;

(ii) that which substantially restrains any of the following and thereby affects prices:

(a) supply volume

(b) market share

(c) transaction counterparties

(3) The term "market share" provided in the preceding two paragraphs and paragraph (8) means the ratio of the volume of goods or services that one or two or more enterprise supplies or receives supplies of, to the aggregate total volume of the relevant goods or services supplied in any particular field of trade within a particular period, or the ratio of the value of goods or services that one or two or more enterprise supplies or receives supplies of, to the aggregate total value of the relevant goods or services supplied in any particular field of trade within a particular period.

(4) If an enterprise has engaged in private monopolization (limited to that engaged in by excluding the business activities of other enterprise, and excluding those which fall under the provisions of paragraph (2)), the Fair Trade Commission must order the enterprise, pursuant to the procedures provided in Chapter VIII, Section 2, to pay to the national treasury a surcharge in an amount equivalent to six percent (two percent if the relevant enterprise engages in the retail business, or one percent if the relevant enterprise engages in the wholesale business) of the amount of sales for goods or services supplied by the enterprise in any particular field of trade through the act (excluding goods or services supplied to other enterprise that supply goods or services in the relevant particular field of trade) and of the amount of sales for goods or services supplied by the enterprise to other enterprise that supply goods or services in the relevant particular field of trade (including goods or services that are necessary in order for the relevant other enterprise to supply the relevant goods or services in the relevant particular field of trade), both of which are calculated using the method provided by Cabinet Order, during the period from the date on which the enterprise began to engage in the act, to the date on which it stopped engaging in the act (if this period exceeds three years, it is deemed to be the three years preceding the date on which the enterprise stopped engaging in the act; referred to as the "Violation Period" in paragraph

(27)); provided, however, that if the amount thus calculated is less than one million yen, the Commission may not order the payment of such a surcharge.

(5) In a case under paragraph (1), if the enterprise falls under any of the following items, the term "ten percent" appearing in that paragraph is deemed to be replaced with "four percent," the term "three percent" is deemed to be replaced with "one point two percent," and the term "two percent" is deemed to be replaced with "one percent":

(i) any company whose amount of stated capital or total contribution amount is not more than three hundred million yen and any company or individual whose number of regular employees is not more than three hundred, which operates as its principal business, a manufacturing, construction, transportation or other business (excluding the business types listed in items (ii) to (iv) inclusive and the business types provided by Cabinet Order pursuant to item (v)).

(ii) any company whose amount of stated capital or total contribution amount is not more than one hundred million yen and any company or individual whose number of regular employees is not more than one hundred, which operates a wholesale business (excluding business types provided by Cabinet Order pursuant to item (v)) as its principal business.

(iii) any company whose amount of stated capital or total amount of contribution is not more than fifty million yen and any company or individual whose number of regular employees is not more than one hundred, which operates as its principal business, business belonging to service business (excluding the business types provided by Cabinet Order pursuant to item (v)).

(iv) any company whose amount of stated capital or total amount of contribution is not more than fifty million yen and any company or individual whose number of regular employees is not more than fifty, which operates as its principal business, business belonging to retail business (excluding the business types provided by Cabinet Order pursuant to the following item).

(v) any company whose amount of stated capital or total amount of contribution is not more than the amount provided by Cabinet Order for each of its business types and any company or individual whose number of regular employees is not more than the number provided by Cabinet Order for each of its business types, which operates as its principal business, business belonging to any of the business types provided by Cabinet Order.

(vi) of cooperative partnerships and other partnerships established pursuant to special Acts with the principal purpose of company in business (including federation of partnerships), any partnership which has a scale comparable to the scale provided in each of the preceding items for the individual business



type in the preceding items as provided by Cabinet Order.

- (6) If an enterprise is ordered to pay a surcharge pursuant to the provisions of paragraph (1), the term "ten percent" appearing in paragraph (1) is deemed to be replaced with "eight percent," the term "three percent" is deemed to be replaced with "two point four percent," the term "two percent" is deemed to be replaced with "one point six percent," the term "four percent" in the preceding paragraph is deemed to be replaced with "three point two percent," the term "one point two percent" is deemed to be replaced with "one percent," and the term "one percent" is deemed to be replaced with "zero point eight percent" if the enterprise had stopped engaging in the relevant violation (limited to when the Period of Implementation for the violation is less than two years) by the day one month prior to the date on which the measure listed in Article 47, paragraph (1), item (iv) or the measure provided in Article 102, paragraph (1) was first taken for the case connected with the relevant violation (hereinafter referred to as "Investigation Start Date" in this Article) (if the measure is not taken, the day one month prior to the date on which the enterprise received notification in connection with the violation pursuant to the provisions of Article 50, paragraph (1) as applied mutatis mutandis pursuant to Article 62, paragraph (4) following the deemed replacement of terms (hereinafter referred to as "Advance notification" in the following paragraph, paragraph (10) and Articles 20-2 to 20-5 inclusive)); provided, however, that this does not apply if the enterprise is subject to the application of provisions of the following paragraphs (7), (8) and (9).
- (7) If an enterprise is ordered to pay a surcharge pursuant to the provisions of paragraph (1) (including when these are applied mutatis mutandis pursuant to paragraph (2) following the deemed replacement of terms; hereinafter the same applies in this paragraph and in paragraphs (19), (22) and (23)) or pursuant to the provisions of paragraph (4), the term "ten percent" appearing in paragraph (1) is deemed to be replaced with "fifteen percent," the term "three percent" is deemed to be replaced with "four point five percent," the term "two percent" is deemed to be replaced with "three percent," the term "six percent" appearing in paragraph (4) is deemed to be replaced with "nine percent," the term "two percent" is deemed to be replaced with "three percent," the term "one percent" is deemed to be replaced with "one point five percent," the term "four percent" appearing in paragraph (5) is deemed to be replaced with "six percent," the term "one point two percent" is deemed to be replaced with "one point eight percent," and the term "one percent" is deemed to be replaced with "one point five percent," if the enterprise falls under any of the following items; provided, however, that this does not apply if the enterprise is subject to application of the provisions of paragraph (9).
- (i) a person that was subject to an order pursuant to the provisions of

- paragraphs (1) or (4) (limited to when the order has become final and binding; the same applies in the following item), or a person that has received a notice pursuant to the provisions of paragraphs (18) or (21), or a person that was subject to decision pursuant to the provisions of Article 63, paragraph (2) within the ten years prior to the Investigation Start Date.
- (ii) a person that was subject to an order pursuant to the provisions of paragraphs (1) or (4), a person that has received a notice pursuant to the provisions of paragraphs (18) or (21), or a person that was subject to a decision pursuant to the provisions of Article 63, paragraph (2) within the ten years prior to the date on which the enterprise received advance notification in connection with a violation if neither the measure listed in Article 47, paragraph (1), item (iv) nor the measure provided in Article 102, paragraph (1) was taken.
- (8) If an enterprise is ordered to pay a surcharge pursuant to the provisions of paragraph (1), the term "ten percent" appearing in paragraph (1) is deemed to be replaced with "fifteen percent," the term "three percent" is deemed to be replaced with "four point five percent," the term "two percent" is deemed to be replaced with "three percent," the term "four percent" appearing in paragraph (5) is deemed to be replaced with "six percent," the term "one point two percent" is deemed to be replaced with "one point eight percent," and the term "one percent" is deemed to be replaced with "one point five percent," if the enterprise falls under any of the following items; provided, however, that this does not apply if the enterprise is subject to application of provisions of following paragraph.
- (i) a person that planned to engage in a violation and required, requested or instigated another enterprise to engage in, or not to discontinue, a violation, either individually or in concert with others, thereby causing the other enterprise to engage in, or not to discontinue, a violation
- (ii) a person that has, at the request of another enterprise, designated a price, supply volume, purchase volume, market share or transaction counterparty in relation to the goods or services involved in the violation, continuously to other enterprise, either individually or in concert with others
- (iii) a person that has committed any of the following acts to materially facilitate the relevant violation, either individually or in concert with others, in addition to the person listed in the preceding two items
- (a) requiring, requesting or instigating another enterprise to perform, or not to discontinue, the relevant violation
- (b) designating price, supply volume, purchase volume, market share or a transaction counterparty to another enterprise in connection with the goods or services involved in the violation, or about business activities constituting the violation (excluding designations exclusively about one's

own transactions)

- (9) If an enterprise is ordered to pay a surcharge pursuant to the provisions of paragraph (1), the term "ten percent" appearing in paragraph (1) is deemed to be replaced with "twenty percent," the term "three percent" is deemed to be replaced with "six percent," the term "two percent" is deemed to be replaced with "four percent," the term "four percent" appearing in paragraph (5) is deemed to be replaced with "eight percent," the term "one point two percent" is deemed to be replaced with "two point four percent," and the term "one percent" is deemed to be replaced with "two percent," if the enterprise falls under any of the items in paragraph (7) and any of the items in the preceding paragraph.
- (10) Notwithstanding the provisions of paragraph (1), the Fair Trade Commission may not order an enterprise that is to pay a surcharge pursuant to the provisions of paragraph (1) to pay the surcharge if the enterprise falls under both of the following items:
- (i) the enterprise is the first among the enterprise who committed the relevant violation to individually submit reports and materials regarding the facts of the violation to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission (excluding when the reports and materials are submitted on or after the Investigation Start Date (or the date on which the enterprise received an advance notification in connection with the violation if neither the measure listed in Article 47, paragraph (1), item (iv) nor the measure provided in Article 102, paragraph (1) was taken; the same applies in the following item, the following paragraph and paragraph (25)) for the case connected with the violation).
  - (ii) the enterprise has not committed the relevant violation since the Investigation Start Date for the case connected with the violation.
- (11) In a case under paragraph (1), the Fair Trade Commission is to reduce the relevant surcharge by fifty percent of the surcharge calculated pursuant to the provisions of paragraph (1) or paragraphs (5) to (9) inclusive, if the enterprise falls under items (i) and (iv) of this paragraph, or by thirty percent of the surcharge calculated pursuant to the provisions of paragraph (1) or paragraphs (5) to (9) inclusive, if the enterprise falls under items (ii) and (iv) or items (iii) and (iv) of this paragraph:
- (i) the enterprise is the second among the enterprise who committed the relevant violation to have individually submitted reports and materials regarding the facts of the violation to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission (excluding when the reports and materials are submitted on or after the Investigation Start Date for the case connected with the relevant violation).
  - (ii) the enterprise is the third among the enterprise who committed the

- violation to have individually submitted reports and materials regarding the facts of the violation to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission (excluding when the reports and materials are submitted on or after the Investigation Start Date for the case connected with the relevant violation).
- (iii) the enterprise is the fourth or fifth among the enterprises that committed the violation to individually submit reports and materials regarding the facts of the violation (excluding reports and materials related to the facts already ascertained by the Fair Trade Commission through the report provided in Article 45, paragraph (1), or the measures as provided in paragraph (4) of the same Article, or other means) to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission (excluding when the reports and materials are submitted on or after the Investigation Start Date for the case connected with the relevant violation).
- (iv) the enterprise has not committed the relevant violation since the Investigation Start Date for the case connected with the relevant violation.
- (12) In a case under paragraph (1), the Fair Trade Commission is to reduce the relevant surcharge by thirty percent of the surcharge calculated pursuant to the provisions of paragraphs (1) or (5) to (9) inclusive for an enterprise that committed the relevant violation and that falls under both of the following items, if the enterprise who submitted reports and materials regarding the relevant violation pursuant to the provisions of item (i) of paragraph (10) or item (i) to (iii) of the preceding paragraph number fewer than five (limited to when the sum of the enterprise who submitted reports and materials pursuant to the provisions of item (i) of paragraph (10) or item (i) to (iii) of the preceding paragraph and the enterprise who submitted reports and materials pursuant to the provisions of item (i) below number five or fewer, and when the total number of enterprise who submitted reports and materials pursuant to the provisions of item (i) below is three or fewer):
- (i) the enterprise individually submitted reports and materials regarding the facts of the violation (excluding reports and materials related to the facts already ascertained by the Fair Trade Commission through the measures listed in the items under Article 47, paragraph (1) or provided in Article 102, paragraph (1), or other means) to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission, by the date set in the Rules of the Fair Trade Commission on or after the Investigation Start Date for the case connected with the relevant violation.
- (ii) the enterprise other than that which has not committed the relevant violation since the date of submission of the reports and materials pursuant to the preceding item.
- (13) If two or more enterprises (limited to when the enterprises are corporations)

that have violated paragraph (1) have jointly submitted reports and materials regarding the facts of the relevant violation to the Fair Trade Commission pursuant to the provisions of the Rules of the Fair Trade Commission, the relevant reports and materials are deemed to have been submitted individually and the provisions of the preceding three paragraphs apply to the two or more enterprises who have submitted the relevant reports and materials, as long as the two or more enterprises fall under item (i) below and either item (ii) or (iii) below. In such cases, the two or more enterprises are deemed to be a single enterprise for the purposes of the calculation of the number of enterprises who have submitted the reports and materials under the provisions of paragraph (10), item (i), paragraph (11), items (i) to (iii) inclusive and item (i) of the preceding paragraph.

(i) that, at the time of the submission of the relevant reports and materials, the two or more enterprises are related as co-subsidiaries, etc. (meaning subsidiaries (meaning corporations for which the majority of the voting rights (excluding voting rights from shares for which voting rights cannot be exercised for all matters on which a resolution can be passed at the shareholders meeting, but including voting rights from shares that are deemed to confer voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act (Act No. 86 of 2005); hereinafter the same applies) of all shareholders (including all members; the same applies hereinafter) are held by another corporation. In such cases, if another corporation and one or more of its subsidiaries or if one or more subsidiaries of a corporation hold the majority of shareholders' voting rights in another corporation, the other corporation is deemed to be a subsidiary of the relevant corporation; the same applies hereinafter in this paragraph), a parent company of an enterprise (meaning another corporation of which the corporation is a subsidiary; the same applies in this item) of an enterprise, or another corporation whose parent company is the same as that of the enterprise; the same applies in the following item and paragraph (25)).

(ii) that, among the relevant two or more enterprises, the one that committed the violation in concert with another of the two or more enterprises, was related to the other enterprise as a co-subsidiary, etc. for the entire period during which it committed the relevant violation concert with the other enterprise (limited to within five years preceding the date on which the relevant reports or materials were submitted).

(iii) that a fact that falls under either of the following exists with regard to one of the two or more enterprises that has not committed the violation in concert with another of the relevant two or more enterprises:

(a) the enterprises has transferred all or part of the business involved in the violation to another enterprises of the relevant two or more enterprises or

- has alienated all or part of the business involved in the violation through a company split, and the relevant other enterprise commenced the relevant violation on the date of the relevant transfer or of the company split.
- (b) the enterprise has received all or part of the business connected to the violation from another enterprise of the relevant two or more enterprises or has succeeded to all or part of the business connected to the relevant violation through a company split, and first committed the violation on the date of the relevant transfer or of the company split.
- (14) In a case under the preceding paragraph, the voting rights held by a corporation or the voting rights held by a corporation and any one or more of its subsidiaries or by any one or more subsidiaries of a corporation is to include the voting rights from shares that cannot be duly asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares (Act No. 75 of 2001).
- (15) Whenever the Fair Trade Commission receives the submission of reports and materials pursuant to the provisions of item (i) of paragraph (10), items (i) to (iii) inclusive of paragraph (11), or item (i) of paragraph (12), the Fair Trade Commission must promptly notify the enterprise that submitted the relevant reports and materials to that effect in writing.
- (16) Prior to issuing an order pursuant to the provisions of paragraph (1) or a notice pursuant to the provisions of paragraphs (18) or (21) to an enterprise that falls under any of the provisions of paragraphs (10) to (12) inclusive, the Fair Trade Commission may additionally request the relevant enterprise to submit reports or materials regarding the facts of the violation.
- (17) If the Fair Trade Commission finds that a fact falling under any of the following items exists before issuing an order pursuant to the provisions of paragraph (1) or a notice pursuant to the provisions of following paragraph to an enterprise that submitted reports and materials pursuant to the provisions of item (i) of paragraph (10), items (i) to (iii) inclusive of paragraph (11), or item (i) of paragraph (12), these provisions do not apply, notwithstanding the provisions of paragraphs (10) to (12) inclusive:
- (i) the reports or materials submitted by the enterprise (meaning the enterprise and any one or more other enterprises that submitted the reports and materials jointly with the enterprise, if the relevant enterprise is the person who submitted the reports and materials pursuant to the provisions of paragraph (13); the same applies in the following item) contained false information.
  - (ii) in a case under the preceding paragraph, the relevant enterprise fails to submit the requested reports or materials or submits false reports or materials.

- (iii) in the case connected with the violation committed by the relevant enterprise, the enterprise coerced another enterprise (if the enterprise is the person that submitted the reports and materials pursuant to the provisions of paragraph (13), among the enterprise and any other one or more enterprises that submitted the reports and materials jointly with the enterprise, one that has coerced an enterprise other than the relevant enterprise and other than any other enterprise that submitted the reports and materials jointly with the enterprise) to commit the violation provided in paragraph (1) or blocked another enterprise from discontinuing the relevant violation.
- (18) If the Fair Trade Commission has decided not to order the payment of a surcharge pursuant to the provisions of paragraph (10), it is to notify the relevant enterprise in writing of that decision at the time it issues an order, pursuant to the provisions of paragraph (1), to enterprises other than the enterprise regarding the case connected with the violation committed by the enterprise who fall under the provisions of paragraph (10) (by the time provided in the Rules of the Fair Trade Commission if the Fair Trade Commission does not issue an order pursuant to the provisions of paragraph (1)).
- (19) In the case under paragraphs (1) or (4), if a final and binding decision on the same case sentences the relevant enterprise to a fine, instead of the amount calculated pursuant to the provisions of paragraphs (1), (4) to (9) inclusive, (11) or (12), the Fair Trade Commission is to deduct from the relevant amount the amount equivalent to one-half of the amount of the relevant fine; provided, however, that this does not apply if the surcharge amount calculated pursuant to the provisions of paragraphs (1), (4) to (9) inclusive, (11) or (12) does not exceed the amount equivalent to one-half of the amount of the relevant fine, or if the surcharge amount after the relevant deduction is less than one million yen.
- (20) In the case under the proviso to the preceding paragraph, the Fair Trade Commission may not order payment of a surcharge.
- (21) If the Fair Trade Commission does not order payment of a surcharge pursuant to the provisions of the preceding paragraph, it is to notify the fined enterprise to that effect in writing upon issuing an order pursuant to the provisions of paragraph (1) (including when these are applied *mutatis mutandis* pursuant to paragraph (2) following the deemed replacement of terms) or paragraph (4) to enterprise other than the relevant enterprises regarding the case connected with the violation provided in paragraph (1), (2) or (4) committed by the relevant enterprise (by the deadline provided for in the Rules of the Fair Trade Commission if the Fair Trade Commission does not issue an order pursuant to these provisions).

- (22) Any enterprise who has received an order pursuant to the provisions of paragraph (1) or (4) must pay the surcharge calculated pursuant to the provisions of paragraphs (1), (4) to (9) inclusive, (11), (12) or (19).
- (23) If the amount of surcharge calculated pursuant to the provisions of paragraphs (1), (4) to (9) inclusive, (11), (12) or (19) includes numbers to the right of the ten thousands place, the surcharge is rounded down to the nearest ten thousand yen.
- (24) If an enterprise that has committed a violation provided in paragraphs (1), (2) or (4) is a juridical person and if the relevant juridical person has ceased to exist by virtue of a merger, the violation committed by the relevant juridical person and any order pursuant to the provisions of paragraph (1) (including when these are applied *mutatis mutandis* pursuant to paragraph (2) following the deemed replacement of terms) and paragraph (4), notice pursuant to the provisions of paragraphs (18) and (21), or decision pursuant to the provisions of Article 63, paragraph (2), received by the juridical person (hereinafter referred to as an "Order, etc." in this paragraph and the following paragraph) is deemed to be a violation committed by the juridical person surviving, or established as a result of the merger, or an Order, etc. received by the juridical person surviving, or established as a result of the merger for the purpose of application of the provisions of the preceding paragraphs and the following paragraph.
- (25) If an enterprise that has committed a violation provided for in paragraph (1), (2) or (4) is a juridical person and the juridical person transferred all of the business connected with the violation to any one or more of its subsidiaries, etc. on or after the Investigation Start Date for the case connected with the relevant violation, or if the juridical person (limited to a corporation) had any one or more of its subsidiaries, etc. succeed to all of the business connected with the violation through a company split on or after the Investigation Start Date for the case connected with the violation, and ceased to exist due to a reason other than merger, the violation committed by the juridical person and the Order, etc. received by the juridical person is deemed to be a violation committed by the subsidiary, etc. to whom all or part of the relevant business has been transferred or who has succeeded to all or part of the relevant business through a company split (hereinafter referred to as a "Subsidiary, etc. That Has Succeeded to Specified Business") or to be an Order, etc. received by the Subsidiary, etc. That Has Succeeded to Specified Business, respectively, for the purpose of application of the provisions of the preceding paragraphs. In this case, if there are two or more subsidiaries, etc. that have succeeded to the specified business, the term "order the enterprise" appearing in paragraph (1) (including when it is applied *mutatis mutandis* pursuant to paragraph (2) following the deemed replacement of terms) is deemed to be replaced with



"order the subsidiary, etc. that has succeeded to the specified business (meaning the Subsidiary, etc. That Has Succeeded to Specified Business as provided in paragraph (25); the same applies hereinafter), jointly and severally with any other subsidiary, etc. that has succeeded to the specified business and that has received an order pursuant to the provisions of this paragraph (including when these are applied mutatis mutandis pursuant to the following paragraph following the deemed replacement of terms)," the term "order the enterprise" appearing in paragraph (4) is deemed to be replaced with "order the subsidiary, etc. that has succeeded to the specified business, jointly and severally with another subsidiary, etc. that has succeeded to the specified business and that has received an order pursuant to the provisions of this paragraph," and the term "Any enterprise who has received an order pursuant to the provisions of paragraphs (1) or (4) must pay" appearing in paragraph (22) is deemed to be replaced with "Any Subsidiary, etc. That Has Succeeded to Specified Business and that has received an order pursuant to the provisions of paragraphs (1) or (4) must pay, jointly and severally with any other Subsidiary, etc. That Has Succeeded to Specified Business and that has received an order pursuant to these provisions."

(26) In a case under the preceding two paragraphs, matters necessary for the application of the provisions of paragraphs (10) to (12) inclusive are provided by Cabinet Order.

(27) After five years have passed since the end of the Period of implementation (or since the end of the Violation Period, for a violation as provided in paragraph (4)), the Fair Trade Commission may not order payment of a surcharge for the relevant violation.

### **Chapter III Trade Associations**

Article 8 A trade association must not engage in any act which falls under any of the following items:

- (i) substantially restraining competition in any particular field of trade
- (ii) entering into an international agreement or an international contract as provided in Article 6
- (iii) limiting the present or future number of enterprise in any particular field of business
- (iv) unjustly restricting the functions or activities of the constituent enterprise (meaning an enterprise who is a member of the trade association; the same applies hereinafter)
- (v) inducing an enterprise to employ such an act as falls under unfair trade practices

Article 8-2 (1) Whenever an act in violation of the provisions of the preceding Article occurs, the Fair Trade Commission may, pursuant to the procedures provided for in Section 2 of Chapter VIII, order the relevant trade association

to cease and desist the relevant act, to dissolve, or to take any other measures necessary to eliminate the relevant act.

(2) The provisions of Article 7, paragraph (2) apply mutatis mutandis to any act in violation of the provisions of the preceding Article.

(3) Whenever the Fair Trade Commission orders a trade association to take measures provided in Article 7, paragraphs (1) or (2), as applied mutatis mutandis pursuant to the preceding paragraph, if the Fair Trade Commission finds it to be particularly necessary, it may, pursuant to the procedures as provided in Section 2 of Chapter VIII, order an officer, manager or constituent enterprise (including the relevant enterprise if an officer, employee, agent or any other person acting for the benefit of an enterprise is a constituent enterprise; the same applies in Article 26, paragraph (1)) of the relevant association to also take measures necessary to ensure the measures provided in Article 7, paragraphs (1) or (2), as applied mutatis mutandis pursuant to the preceding paragraph.

Article 8-3 The provisions of Article 7-2, paragraphs (1), (3), (5) and (6) (excluding proviso), (10) to (18) inclusive (excluding paragraph (13), items (ii) and (iii)), and paragraphs (22), (23), and (27) apply mutatis mutandis to cases in which an act is committed in violation of the provisions of Article 8, item (i) (limited to when an act is committed that constitutes an unreasonable restraint of trade) or item (ii) thereof (limited when an international agreement or an international contract is concluded that contains matters constituting unreasonable restraint of trade). In this case, in Article 7-2, paragraph (1), the term "enterprise" is deemed to be replaced with "trade association"; and the term "order the relevant enterprise" is deemed to be replaced with "order the constituent enterprise of the relevant trade association (including the relevant enterprise if an officer, employee, agent or any other person acting for the benefit of an enterprise is a constituent enterprise; hereinafter referred to as a "Specified Enterprise" in this Article)"; in paragraph (5) of the same Article, the term "enterprise" is deemed to be replaced with "Specified Enterprise"; in the main clause of paragraph (6) of the same Article, the term "enterprise" is deemed to be replaced with "Specified Enterprise"; the term "had discontinued the relevant violation (limited to when the Period of implementation for the violation is less than two years)" is deemed to be replaced with "had discontinued the business activities that constituted the relevant violation (limited to when the Period of implementation of the business activities that constituted the relevant violation is less than two years)"; in paragraph (10) of the same Article, the term "enterprise to pay" is deemed to be replaced with "Specified Enterprise to pay," the term "relevant enterprise" is deemed to be replaced with "relevant Specified Enterprise"; the term "enterprise who committed the relevant

violation" is deemed to be replaced with "Specified Enterprise of the trade association that committed the relevant violation"; and the term "has not committed" is deemed to be replaced with "has not effected the business activities that constituted"; in paragraph (11) of the same Article, the term "enterprise" is deemed to be replaced with "Specified Enterprise"; the term "paragraphs (5) to (9) inclusive" is deemed to be replaced with "paragraph (5) or (6)"; the term "enterprise who committed the relevant violation" is deemed to be replaced with "Specified Enterprise of the trade association that committed the relevant violation"; and the term "has not committed" is deemed to be replaced with "has not effected the business activities that constituted"; in paragraph (12) of the same Article, the term "enterprise who committed the relevant violation" is deemed to be replaced with "Specified Enterprise of the trade association that committed the relevant violation"; the term "or (5) to (9) inclusive" is deemed to be replaced with "(5) or (6)"; and the term "has not committed" is deemed to be replaced with "has not effected the business activities that constituted"; in paragraph (13) of the same Article excluding the items thereof, the term "the enterprises who have committed a violation as provided in paragraph (1)" is deemed to be replaced with "Specified Enterprises of the trade association that committed an act in violation of the provisions of item (i) (limited to when an act is committed that falls under unreasonable restraint of trade) or item (ii) (limited to when an international agreement or an international contract is entered into containing such matters as fall under unreasonable restraint of trade) of the following Article," the term "two or more of the enterprises" is deemed to be replaced with "two or more of the Specified Enterprises," the term "fall under item (i) below and either item (ii) or (iii) below" is deemed to be replaced with "fall under item (i) below," the term "the number of enterprises who have submitted" is deemed to be replaced with "the number of Specified Enterprises who have submitted," and the term "an enterprise" is deemed to be replaced with "a Specified Enterprise"; in item (i) of the same paragraph, the term "two or more enterprises" is deemed to be replaced with "two or more Specified Enterprises," and the term "the relevant enterprise" is deemed to be replaced with "the relevant Specified Enterprise"; in paragraphs (15) and (16) of the same Article, the term "enterprise" is deemed to be replaced with "Specified Enterprise"; in paragraph (17) of the same Article, the term "enterprises who submitted" is deemed to be replaced with "Specified Enterprises who submitted," the term "the relevant enterprise (if the enterprise is" is deemed to be replaced with "the relevant Specified Enterprise (if the Specified Enterprise is," the term "one or more of the relevant enterprises" is deemed to be replaced with "one or more of the relevant Specified Enterprises," the term "jointly with the relevant enterprise" is deemed to be replaced with "jointly with the relevant Specified Enterprise,"

the term "other enterprises" is deemed to be replaced with "other Specified Enterprises," the term "one or more of the relevant enterprises and other enterprises" is deemed to be replaced with "one or more of the relevant Specified Enterprises and other Specified Enterprises," the term "committed by the relevant enterprise" is deemed to be replaced with "committed by the relevant trade association," the term "if the relevant enterprise" is deemed to be replaced with "if the relevant Specified Enterprise," the term "an enterprise other than" is deemed to be replaced with "a Specified Enterprise other than," the term "commit the violation provided in paragraph (1)" is deemed to be replaced with "effect the business activities that constituted the relevant violation," and the term "discontinuing" is deemed to be replaced with "discontinuing the business activities that constituted"; in paragraph (18) of the same Article, the term "enterprise" is deemed to be replaced with "Specified Enterprise"; and the term "violation committed" is deemed to be replaced with "report submitted pursuant to the provisions of item (i) of the same paragraph"; in paragraph (22) of the same Article, the term "paragraph (1) or (4)" is deemed to be replaced with "paragraph (1)," the term "paragraphs (1), (4) to (9) inclusive" is deemed to be replaced with "the same paragraph or paragraphs (5), (6)," and the term "(12), or (19)" is deemed to be replaced with "or (12)"; in paragraph (23) of the same Article, the term "(4) to (9) inclusive" is deemed to be replaced with "(5), (6)," and the term "(12), or (19)" is deemed to be replaced with "or (12)"; and in the paragraph (27) of the same Article, the term "the Period of implementation (or since the end of the Violation Period, which is applicable to a violation stipulated in paragraph (4))" is deemed to be replaced with "the Period of implementation."

### **Chapter III-2 Monopolistic Situations**

- Article 8-4 (1) Whenever a monopolistic situation exists, the Fair Trade Commission may order the relevant enterprise, pursuant to the procedures as provided in Section 2 of Chapter VIII, to transfer a part of its business or to take any other measures necessary to restore competition with respect to the relevant goods or services; provided, however, that this does not apply if it is found that such measures may, in relation to the relevant enterprise, reduce the scale of business to such an extent that the expenses required for the supply of goods or services the relevant that the enterprise supplies will rise sharply, undermine its financial position, or make it difficult to maintain its international competitiveness, or if alternative measures that are found to be sufficient for restoring competition with respect to the relevant goods or services can be taken.
- (2) In issuing an order pursuant to the preceding paragraph, the Fair Trade Commission must give consideration, based on the matters listed in the following items, to the smooth operation of business activities by the relevant

enterprise and enterprise affiliated therewith and the stabilization of life of those employed by the relevant enterprise:

- (i) situations of assets, income and expenditures and other aspects of accounting
- (ii) situations of officers and employees
- (iii) location and other locational conditions of factories, workplaces and offices
- (iv) situations of facilities and equipment for the business
- (v) the substance of patent rights, trademark rights, and other intellectual property rights and other technological features
- (vi) capacity for and situations of production, sales, etc.
- (vii) capacity for and situations of funding and acquisition of raw materials, etc.
- (viii) situations of supply and distribution of goods or services.

#### **Chapter IV Shareholdings, Interlocking Officers, Mergers, Splits, Share Transfers and Acceptance of Assignments of Business**

Article 9 (1) No company may be established that would cause an excessive concentration of economic power due to share holding (including equity interest; the same applies hereinafter) in other companies in Japan.

(2) No company (including a foreign company; the same applies hereinafter) may become a company that causes an excessive concentration of economic power in Japan by acquiring or holding shares in other companies in Japan.

(3) The term "excessive concentration of economic power" in the preceding two paragraphs means that the overall business scale of a company, its subsidiary companies, and other domestic companies whose business activities it controls through shareholding, is extremely large across a considerable number of business fields; that a company, its subsidiary companies, and other domestic companies it controls have a great amount of power to influence other enterprises through transactions with their funds; or that a company, its subsidiary companies, and other domestic companies it controls occupy influential positions in a considerable number of interrelated fields of business; and that any of these factors have a large effect on the national economy and impede fair and free competition from moving forward.

(4) If the sum of the total assets (meaning the amount of total assets calculated pursuant to the method provided in the Rules of the Fair Trade Commission; hereinafter the same applies in this paragraph) of a company falling under any of the descriptions listed in the following items and its subsidiary companies (limited to total assets of companies in Japan), as aggregated pursuant to the method provided in the Rules of the Fair Trade Commission, exceeds the amount provided by Cabinet Order, which must be no less than the amount listed in the relevant item, the company must submit, pursuant to the provisions of the Rules of the Fair Trade Commission, a written report on its and its subsidiary companies' business to the Fair Trade Commission within

three months from the end of each business year; provided, however, that this does not apply if the company is a subsidiary company of another company.

- (i) a company for which the ratio of the total acquisition value (or other value if it is so listed in the latest balance sheet) of the shares of subsidiary companies to the total assets of the relevant company exceeds fifty percent (referred to as "holding company" in the following item): six hundred billion yen
  - (ii) a company that is engaged in banking, insurance or Type I Financial Instruments Business (meaning Type I Financial Instruments Business as provided in Article 28, paragraph (1) of Financial Instruments and Exchange Act (Act No. 25 of 1948); the same applies in paragraphs (3) and (4) of the following Article) (excluding holding companies): eight trillion yen
  - (iii) a company other than those listed in the preceding two items: two trillion yen
- (5) The term "subsidiary companies" as used in the preceding two paragraphs means other companies in Japan of which the majority of voting rights of all shareholders are held by another company. In this case, any other company in Japan of which majority of voting rights of all shareholders are held by a company and any one or more of its subsidiary companies or by any one or more subsidiary companies of a company is deemed as a subsidiary company of the relevant company.
- (6) In a case under the preceding paragraph, the voting rights held by a company or the voting rights held by a company and one or two or more of its subsidiary companies or by one or two or more of subsidiary companies of a company are to include the voting rights from shares that cannot be duly asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) and Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc.
- (7) A newly incorporated company that falls under a case provided in paragraph (4) at incorporation must, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Commission thereof within thirty days from the date of its incorporation.

Article 10 (1) No company may acquire or hold shares of any other companies if its acquisition or holding of shares substantially restrains competition in any particular field of trade, nor may any company use unfair trade practices to acquire or hold shares in another company.

- (2) If a company whose domestic sales (meaning the amount stipulated by the Rules of the Fair Trade Commission as the total amount of value of goods and services supplied in Japan in the most recent business year; the same applies hereinafter) as calculated in conjunction with the domestic sales of companies, etc. other than the relevant company (meaning companies, partnerships

(including equivalents of partnerships in foreign countries; the same applies hereinafter) and any other business entities that are similar to these; the same applies hereinafter in this Article) that belong to the group of combined companies to which the relevant company belongs (meaning a group consisting of the relevant company, its subsidiary companies, its parent company which is not a subsidiary company of another company, and subsidiary companies of the relevant parent company (excluding the relevant company and subsidiary companies of the relevant company); the same applies hereinafter) using a method stipulated in the Rules of the Fair Trade Commission (hereinafter referred to as the "Total Domestic Sales Amount") exceed the amount provided by Cabinet Order, which must be no less than twenty billion yen (such a company is referred to as an "Acquiring Company" hereinafter in this Article), intends to acquire shares of another company whose domestic sales as calculated in conjunction with the domestic sales of subsidiary companies of the relevant other company using a method stipulated in the Rules of the Fair Trade Commission exceed the amount provided by Cabinet Order, which must be no less than five billion yen (such a company is referred to as the "Issuing Company" hereinafter in this Article) (including when the Acquiring Company is a settlor or beneficiary and may exercise voting rights or give instructions to the trustee regarding the exercise of such voting rights with regard to the shares held in money or securities trust, and intends to have the trustee acquire shares issued by the Issuing Company), so that the ratio of the number of voting rights, which combines the number of voting rights for the shares of the Issuing Company to be held by the Acquiring Company after the acquisition with the number of voting rights for the shares of the Issuing Company held by companies, etc. other than the Acquiring Company that belongs to the group of combined companies to which the Acquiring Company belongs (referred to as "companies, etc. other than the Acquiring Company" in paragraph (4) below), to the voting rights of all shareholders of the Issuing Company exceeds the numerical value provided for by Cabinet Order (if more than one numerical value is provided for, each of the numerical values pursuant to the provisions of Cabinet Order), which must be no less than twenty percent, is to give the Fair Trade Commission advance notification of the plan for the acquisition, pursuant to the provisions of the Rules of the Fair Trade Commission; provided, however, this does not apply if the advance submission of such a plan is stipulated as being difficult under the Rules of the Fair Trade Commission.

- (3) In a case under the preceding paragraph, the voting rights from shares of the Issuing Company to be held by the Acquiring Company after the acquisition may not include voting rights from shares held in money or securities trust (limited to when the settlor or beneficiary may exercise the voting rights or

give instructions to the trustee regarding the exercise of such voting rights), voting rights from shares to be held by the Acquiring Company after the acquisition if the Acquiring Company is engaged in banking or insurance (excluding companies engaged in insurance that are provided in the Rules of the Fair Trade Commission; the same applies in the following paragraph and paragraphs (1) and (2) of the following Article) and intends to acquire shares of other companies in Japan (excluding companies engaged in banking or insurance and other companies provided in the Rules of the Fair Trade Commission; the same applies in the following paragraph and paragraphs (1) and (2) of the following Article), and voting rights from shares to be held by the Acquiring Company after the acquisition if the Acquiring Company is engaged in Type I Financial Instruments Business and intends to acquire the shares in the course of its business, but do include voting rights from shares held in money or securities trust that the Acquiring Company may exercise as the settlor or beneficiary or that allow the Acquiring Company to give instructions regarding their exercise (excluding voting rights provided in the Rules of the Fair Trade Commission; the same applies in the following paragraph), and voting rights for the shares that may not be duly asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) and Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc.

- (4) In a case under paragraph (2), voting rights from shares of the Issuing Company to be held by companies, etc. other than the Acquiring Company may not include voting rights from shares held in money or securities trust (limited to voting rights that the settlor or beneficiary can exercise or give instructions to the trustee to exercise), voting rights from the shares of other companies in Japan held by companies, etc. other than the Acquiring Company if the Acquiring Company is engaged in banking or insurance, and voting rights from shares held by companies, etc. other than the Acquiring Company in the course of its business if the Acquiring Company is engaged in Type I Financial Instruments Business, but do include voting rights from shares held in money or securities trust that the Acquiring Company may exercise as the settlor or beneficiary, or that allow the Acquiring Company to give instructions regarding their exercise, and voting rights from shares that may not be duly asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) and Article 148, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc.
- (5) If a partner in a partnership that is a subsidiary company of a company (limited to partnerships that were established under a partnership contract as provided in Article 667, paragraph (1) of the Civil Code (Act No. 89 of 1896), an Investment LPS as provided in Article 2, paragraph (2) of the Limited



Partnership Act for Investment (Act No. 90 of 1998) (referred to simply as an "investment limited partnership" in paragraph (1), item (iv) of the following Article), a Limited Liability Partnership as provided in Article 2 of the Limited Liability Partnership Act (Act No. 40 of 2005), or an organization similar to these that were established in accordance with the laws and regulations of a foreign country (hereinafter referred to as a "Specified Organization Similar to a Partnership" in this paragraph); the same applies hereinafter in this paragraph) (including a member of a Specified Organization Similar to a Partnership; the same applies hereinafter in this paragraph) intends to acquire shares of the Issuing Company as partnership property (including property of a Specified Organization Similar to a Partnership; the same applies hereinafter in this paragraph) (including if all of the partners in a partnership that is a subsidiary company of a company may be settlors or beneficiaries and may exercise voting rights or give instructions to the trustee regarding the exercise of voting rights with regard to shares held in money or securities trust, and intend to have the trustee acquire shares issued by the Issuing Company), it is deemed that the parent company of the partnership (meaning, if a partnership has two or more parent companies, the parent company of the partnership that is a subsidiary company of all the other parent companies; the same applies hereinafter in this paragraph) intends to acquire all of the shares, and if the shares of the Issuing Company belong to the partnership property of a partnership that is a subsidiary company of a company (including when, regarding the shares held in money or securities trust that belong to the partnership property of a partnership that is a subsidiary company of a company, all the partners in the partnership may be trustees or beneficiaries and may exercise the voting rights or give instructions to the trustee regarding the exercise of such voting rights), the parent company of the relevant partnership is deemed to hold all of the shares, for the purpose of the application of the provisions of paragraph (2).

- (6) The term "subsidiary company" as used in paragraph (2) and the preceding paragraph means a stock company for which the majority of voting rights of all shareholders are held by a company or any other company, etc. prescribed by the Rules of the Fair Trade Commission as one whose management is controlled by such a company.
- (7) The term "parent company" as used in paragraphs (2) and (5) means a company prescribed by the Rules of the Fair Trade Commission as one that controls the management of a company, etc.
- (8) No company that gave notification in accordance with the provisions of paragraph (2) may acquire the shares under the notification until the expiration of the thirty-day waiting period from the date of acceptance of the notification; provided, however, that whenever the Fair Trade Commission

finds it to be necessary, it may shorten the relevant period.

- (9) If the Fair Trade Commission intends to order necessary measures regarding the relevant share acquisition under a notification pursuant to the provisions of Article 17-2, paragraph (1), it must notify the Acquiring Company pursuant to the provisions of Article 50, paragraph (1) before the expiration of the thirty-day waiting period provided in the main clause of the preceding paragraph, or of any shortened period pursuant to the proviso thereof (if the Fair Trade Commission requested the Acquiring Company to submit necessary reports, information or materials (hereinafter in this paragraph, "Reports, etc.") pursuant to the provisions of the Rules of the Fair Trade Commission during the relevant period, the period up to the date on which one hundred-twenty days from the date of acceptance of the notification stipulated in the preceding paragraph have passed, or the date on which ninety days from the date of acceptance of all the Reports, etc. have passed, whichever is later)(hereinafter referred to as "Notice Period" in this Article.); provided, however, that this does not apply to cases falling under any of the following items:
- (i) of matters in the plan regarding the acquisition of shares under the notification, those which are considered important in light of the provisions of paragraph (1) are not carried out by the deadline stipulated in the relevant plan.
  - (ii) there has been a false statement with respect to important matters in the plan regarding the acquisition of shares under the notification.
  - (iii) when the notice pursuant to provisions of Article 48-2 has been made in relation to the acquisition of shares under the notification, the application for approval under the provisions of Article 48-3 (1) has not been made within the period stipulated in that clause.
  - (iv) when the notice pursuant to the provisions of Article 48-2 has been made in relation to the acquisition of shares under the notification, there has been a withdrawal of the application for approval under the provisions of Article 48-3 (1).
  - (v) when the notice pursuant to the provisions of Article 48-2 has been made in relation to the acquisition of shares under the notification, there has been a decision made under the provisions of Article 48-3 (6) on the application for approval under the provisions of Article 48-3 (1).
  - (vi) the approval of Article 48-3 (3) (including approval of a change under the provisions of Article 48-3 (8)) has been rescinded under the provisions of Article 48-5 (1) (limited to portions for item 1) in relation to the acquisition of shares under the notification.
  - (vii) the approval of Article 48-3 (3) (including approval of a change under the provisions of Article 48-3 (8)) has been rescinded under the provisions of Article 48-5 (1) (limited to portions for item 2) in relation to the acquisition

of shares under the notification.

- (10) In cases falling under the provisions of item (i) of the preceding paragraph, the Fair Trade Commission must send a notification under the main clause of the preceding paragraph within one year from the deadline in the same item if it intends to order necessary measures relating to the acquisition of shares under the notification pursuant to the provisions of Article 17-2, paragraph (1).
- (11) In cases falling under the provisions of Article 10 (9) (iii), when the Fair Trade Commission intends to order measures that are necessary in relation to the acquisition of shares under the notification pursuant to the provisions of Article 17-2 (1), it must give the notice of the main text of Article 10 (9) within the period that results from adding sixty days to the Notice Period.
- (12) In cases falling under the provisions of Article 10 (9) (iv), when the Fair Trade Commission intends to order measures that are necessary in relation to the acquisition of shares under the notification pursuant to the provisions of Article 17-2 (1), it must give the notice of the main text of Article 10 (9) within the period that results from adding to the Notice Period the period that is equivalent to the period from the date of the notice pursuant to the provisions of Article 48-2 until the date when the withdrawal of that item was made.
- (13) In cases falling under the provisions of Article 10 (9) (v), when the Fair Trade Commission intends to order measures that are necessary in relation to the acquisition of shares under the notification pursuant to the provisions of Article 17-2 (1), it must give the notice of the main text of Article 10 (9) within the period that results from adding ninety days to the Notice Period.
- (14) In cases falling under the provisions of Article 10 (9) (vi), when the Fair Trade Commission intends to order measures that are necessary in relation to the acquisition of shares under the notification pursuant to the provisions of Article 17-2 (1), it must give the notice of the main text of Article 10 (9) within the one year beginning on the date of the decision pursuant to the provisions of Article 48-5 (1).

Article 11 (1) No company engaged in banking or insurance businesses may acquire or hold voting rights in another company in Japan if it results in its holding more than five percent (ten percent for a company engaged in insurance business; the same applies in the following paragraph) of voting rights of all shareholders; provided, however, that this does not apply if the approval of the Fair Trade Commission is obtained in advance pursuant to the provisions of the Rules of the Fair Trade Commission, and to cases falling under any of the following items:

- (i) cases in which voting rights are acquired or held by acquisition or holding of shares as a result of the exercise of a security interest, or of receipt of substitute performance
- (ii) cases in which the ratio of the voting rights from shares already held to

- voting rights of all shareholders of the company increases, as a result of acquisition by another company in Japan of its own shares
- (iii) cases in which voting rights are acquired or held by acquisition or holding of the shares in the form of trust property in a money or securities trust
  - (iv) cases in which voting rights are acquired or held by a limited liability partner in an investment limited partnership (hereinafter referred to as "Limited Liability Partner" in this item) as a result of acquisition or holding of shares as partnership property; provided, however, that this does not apply if the Limited Liability Partner may exercise the voting rights, if the Limited Liability Partner may give instructions to an unlimited liability partner in the investment limited partnership regarding the exercise of such voting rights, or if the voting rights are held in excess of the period provided by Cabinet Order from the date on which the voting rights were acquired
  - (v) cases in which voting rights are acquired or held by a partner (excluding a partner to which management of the business is delegated; hereinafter referred to as a "Non-Managing Partner" in this item) in a partnership that was established by a partnership contract provided in Article 667, paragraph (1) of the Civil Code, whose purpose is operation of business to make investments into companies (limited to partnerships in which management of the business is delegated to one or more partners) as a result of acquisition or holding of shares as partnership property; provided, however, that this does not apply if the Non-Managing Partner may exercise voting rights, if the Non-Managing Partner may give instructions to a partner to which the management of business regarding the exercise of such voting rights is delegated, or if the voting rights are held in excess of the period provided in the Cabinet Order referred to in the preceding item from the date on which the relevant voting rights were acquired
  - (vi) In addition to the cases under the preceding items, cases provided for in the Rules of the Fair Trade Commission as cases in which there is no danger of restriction on the business activities of another company in Japan
- (2) Any company, in the cases under items (i) to (iii) inclusive and (vi) of the preceding paragraph (in the case under item (iii) of the same paragraph, excluding when the settlor or beneficiary other than those acquired or holding the relevant voting rights may exercise the voting rights and the relevant settlor or beneficiary may instruct the trustee on the exercise of such voting rights), that attempts to hold the relevant voting rights of another company in Japan over a period of one year from the date of such acquisition resulting in holding in excess of five percent of total voting rights of all shareholders must obtain approval to do so in advance from the Commission, pursuant to the provisions of the Rules of the Fair Trade Commission. Except in a case under item (iii) of the same paragraph, the approval of the Fair Trade Commission in

such cases must be conditional on prompt disposal of the relevant voting rights by the company engaged in the banking or insurance business.

(3) If the Fair Trade Commission seeks to grant approval under the provisions of the preceding two paragraphs, it must consult with the Prime Minister in advance of doing so.

(4) The authority of the Prime Minister as set forth in the preceding paragraph is hereby delegated to the Commissioner of the Financial Services Agency.

Article 12 Deleted.

Article 13 (1) An officer or an employee (meaning, in this Article, a person other than an officer engaged in the business of a company on a regular basis) of a company may not hold a position as an officer of another company at the same time, if the person's doing so substantially restrains competition in any particular field of trade.

(2) A company must not use unfair trade practices to coerce another company with which it is in competition in Japan to admit its officer to a concurrent position as an officer or employee of the other company, or to coerce another company to admit its employee to a concurrent position as an officer.

Article 14 A person other than a company may not acquire or hold shares in a company if the person's doing so substantially restrains competition in any particular field of trade, nor may a person that is not a company use unfair trade practices to acquire or hold shares in a company.

Article 15 (1) No company may effect a merger if any of the following items applies:

(i) if the merger substantially restrains competition in a particular field of trade

(ii) if unfair trade practices are employed in the course of the merger.

(2) Every company that intends to become a party to a merger (hereinafter in this Article "Merging Company") must, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its merger plan if the total domestic sales amount of any one of the companies intending to be parties to the merger exceeds the amount provided by Cabinet Order, which must be no less than twenty billion yen, and the total domestic sales amount of any one of the other merging companies exceeds the amount provided by Cabinet Order, which must be no less than five billion yen; provided, however, that this does not apply if all of the merging companies belong to the same group of combined companies.

(3) The provisions of paragraphs (8) to (14) inclusive of Article 10 apply mutatis mutandis to the restriction of a merger under a notification pursuant to the provisions of the preceding paragraph and to the orders made by the Fair Trade Commission pursuant to the provisions of Article 17-2, paragraph (1). In this case, in Article 10, paragraph (8) and paragraphs (10) to (14), the term

"acquire the shares" is deemed to be replaced with "merge"; in paragraph (9) of the same Article, the terms "share acquisition" and "acquisition of shares" is deemed to be replaced with "merger"; the term "notify the Acquiring Company" is deemed to be replaced with "notify the merging companies"; and the term "requested the Acquiring Company" is deemed to be replaced with "requested at least one of the merging companies"; and in paragraph (10) of the same Article, the term "acquisition of shares" is deemed to be replaced with "merger."

Article 15-2 (1) No company may effect a joint incorporation-type company split (meaning an incorporation-type company split that a company effects jointly with another company; the same applies hereinafter) or an absorption-type split if any of the following items applies:

- (i) if the joint incorporation-type company split or absorption-type split substantially restrains competition in a particular field of trade
  - (ii) if unfair trade practices have been employed in the course of the joint incorporation-type company split or absorption-type split
- (2) Every company that intends to become a party to a joint incorporation-type company split, pursuant to the provisions of the Rules of the Fair Trade Commission, is to notify the Fair Trade Commission in advance of its plan with regard to such a joint incorporation-type company split if any of the following items applies; provided, however, that this does not apply if all the companies intending to become parties to the joint incorporation-type company split belong to the same group of combined companies:
- (i) the total domestic sales amount of any one of the companies that intend to become parties to the joint incorporation-type company split (limited to a company that intends to have the company incorporated through such a joint incorporation-type company split acquire all of its business (hereinafter in this paragraph "Total Succession Company")) exceeds the amount specified by Cabinet Order, which must be no less than twenty billion yen, and the total domestic sales amount of any one of the other companies that intend to become parties to the same company split (limited to a Total Succession Company) exceeds the amount specified by Cabinet Order, which must be no less than five billion yen.
  - (ii) the total domestic sales amount of any one of the companies that intend to become parties to the joint incorporation-type company split (limited to a Total Succession Company) exceeds the amount specified by Cabinet Order, which must be no less than twenty billion yen, and the domestic sales of any one of the other companies that intend to become parties to the same company split (limited to a company that intends to have the company incorporated through such a joint incorporation-type company split acquire a substantial part of its business (hereinafter in this paragraph "substantial

part succession company")), in connection with the part of the business to be succeeded to, exceed the amount specified by Cabinet Order, which must be no less than three billion yen.

(iii) the total domestic sales amount of any one of the companies that intend to become parties to the joint incorporation-type company split (limited to a Total Succession Company) exceeds the amount specified by Cabinet Order, which must be no less than five billion yen, and the domestic sales of any one of the other companies that intend to become parties to the same company split (limited to a substantial part succession company), in connection with the part of the business to be succeeded to, exceeds the amount specified by Cabinet Order, which must be no less than ten billion yen (excluding cases that fall under the previous item).

(iv) the domestic sales of any one of the companies that intend to become parties to the joint incorporation-type company split (limited to a substantial part succession company), in connection with the part of the business to be succeeded to, exceed the amount specified by Cabinet Order, which must be no less than ten billion yen, and the domestic sales of any one of the other companies that intend to become parties to the same company split (limited to a substantial part succession company), in connection with the part of the business to be succeeded to, exceed the amount specified by Cabinet Order, which must be no less than three billion yen.

(3) Every company that intends to become a party to an absorption-type split must, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its plan with regard to such an absorption-type split if any of the following items applies; provided, however, that this does not apply if all the companies intending to become parties to the absorption-type split belong to the same group of combined companies:

(i) the total domestic sales amount of any one of the companies that intend to become parties to the absorption-type split (limited to a company that intends to alienate all of its business through such absorption-type split (referred to in the following item as "Total Succession Company")) exceeds the amount specified by Cabinet Order, which must be no less than twenty billion yen, and the total domestic sales amount of the company that intends to succeed to the business through such a split exceeds the amount specified by Cabinet Order, which must be no less than five billion yen.

(ii) the total domestic sales amount of any one of the companies that intend to become parties to the absorption-type split (limited to a Total Succession Company) exceeds the amount specified by Cabinet Order, which must be no less than five billion yen, and the total domestic sales amount of the company that intends to succeed to the business through such a split exceeds the amount specified by Cabinet Order, which must be no less than twenty

- billion yen (excluding cases that fall under the previous item).
- (iii) the domestic sales of any one of the companies that intend to become parties to the absorption-type split (limited to a company that intends to alienate a substantial part of its business through such an absorption-type split (referred to in the following item as "substantial part succession company")), in connection with the part of the business to be alienated, exceeds the amount specified by Cabinet Order, which must be no less than ten billion yen, and the total domestic sales amount of the company that intends to succeed to the business through such a split exceeds the amount specified by Cabinet Order, which must be no less than five billion yen.
- (iv) the domestic sales of any one of the companies that intend to become parties to the absorption-type split (limited to a substantial part succession company), in connection with the part of the business to be alienated, exceeds the amount specified by Cabinet Order, which must be no less than three billion yen, and the total domestic sales amount of the company that intends to succeed to the business through such a split exceeds the amount specified by Cabinet Order, which must be no less than twenty billion yen (excluding cases that fall under the previous item).
- (4) The provisions of Article 10, paragraphs (8) to (14) inclusive apply mutatis mutandis to the restriction of joint incorporation-type company splits and absorption-type splits under a notification pursuant to the provisions of the two preceding paragraphs and to the orders made by the Fair Trade Commission pursuant to the provisions of Article 17-2, paragraph (1). In this case, the term "acquire the shares" in Article 10, paragraph (8) and paragraphs (10) to (14) is deemed to be replaced with "become a party to the joint incorporation-type company split or to the absorption-type split"; in paragraph (9) of the same Article, the terms "share acquisition" and "acquisition of shares" is deemed to be replaced with "joint incorporation-type company split or absorption-type split"; the term "requested the Acquiring Company" is deemed to be replaced with "requested at least one of the companies intending to become parties to the joint incorporation-type company split or to the absorption-type split"; and the term "notify the Acquiring Company" is deemed to be replaced with "notify the company intending to be a party to the joint incorporation-type company split or to the absorption-type split"; and in paragraph (10) of the same Article, the term "the acquisition of shares" is deemed to be replaced with "the joint incorporation-type company split or the absorption-type split."

Article 15-3 (1) No company may engage in a joint share transfer (meaning a share transfer carried out by a company jointly with another company; the same applies hereinafter) if it falls under either of the following items:

- (i) if the joint share transfer substantially restrains competition in a



particular field of trade

(ii) if unfair trade practices have been employed in the course of the share transfer

(2) Every company that intends to engage in a joint share transfer must, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its plan with regard to the share transfer, if the total amount of the domestic sales of any one of the companies intending to be parties to the joint share transfer exceeds the amount provided by Cabinet Order, which must be no less than twenty billion yen, and the total amount of the domestic sales of any one of the other companies intending to be parties to the same joint share transfer exceeds the amount provided by Cabinet Order, which must be no less than five billion yen; provided, however, that this does not apply if all the companies intending to be parties to the joint share transfer belong to the same group of combined companies.

(3) The provisions of the paragraphs (8) to (14) inclusive of Article 10 apply mutatis mutandis to the restriction of a joint share transfer under a notification pursuant to the provisions of the preceding paragraph, and to the orders made by the Fair Trade Commission pursuant to the provisions of Article 17-2, paragraph (1). In this case, the term "acquire the shares" appearing in Article 10, paragraph (8) and paragraphs (10) to (14) is deemed to be replaced with "perform the joint share transfer"; in paragraph (9) of the same Article, the terms "share acquisition" and "acquisition of shares" is deemed to be replaced with "joint share transfer"; the term "notify the Acquiring Company" is deemed to be replaced with "notify at least one of the companies intending to be parties to the joint share transfer"; and the term "requested the Acquiring Company" is deemed to be replaced with "requested the company intending to be a party to the joint share transfer"; and in paragraph (10) of the same Article, the term "acquisition of shares" is deemed to be replaced with "joint share transfer."

Article 16 (1) No company may engage in any of the following acts if its doing so substantially restrains competition in any particular field of trade, nor may it engage in any of the following acts through unfair trade practices:

(i) accepting assignment of the whole or a substantial part of the business of another company

(ii) accepting assignment of the whole or a substantial part of the fixed assets used for the business of another company

(iii) taking on a lease of the whole or a substantial part of the business of another company

(iv) undertaking the management of the whole or a substantial part of the business of another company

(v) entering into a contract which provides for a joint profit and loss account for

business with another company

(2) Any company whose total domestic sales amount exceeds the amount provided by Cabinet Order, which must be no less than twenty billion yen (referred to in paragraph (4) as "assignee company") must, pursuant to the provisions of the Rules of the Fair Trade Commission, notify the Fair Trade Commission in advance of its plan with regard to the acceptance of assignment of the business or the fixed assets used for the business (hereinafter in this Article "Business, etc.") if either of the following items applies; provided, however, that this does not apply if the company intending to accept assignment of the Business, etc. and the company intending to assign the relevant Business, etc. belong to the same group of combined companies.

(i) the company intends to accept assignment of the whole business of another company whose domestic sales exceeds the amount provided by Cabinet Order, which must be no less than three billion yen.

(ii) the company intends to accept assignment of a substantial part of the business or the whole or a substantial part of the fixed assets used for the business of another company, and the domestic sales in connection with the subject of such acceptance of assignment exceeds the amount provided by Cabinet Order, which must be no less than three billion yen.

(3) The provisions of paragraphs (8) to (14) inclusive of Article 10 apply mutatis mutandis to the restriction of acceptance of assignment of Business, etc. under a notification pursuant to the provisions of the preceding paragraph and the orders made by the Fair Trade Commission pursuant to the provisions of Article 17-2, paragraph (1). In this case, the term "acquire the shares" appearing in Article 10, paragraph (8) and paragraphs (10) to (14) is deemed to be replaced with "accept assignment of the business or the fixed assets used for the business"; in paragraph (9) of the same Article, the terms "share acquisition" and "acquisition of shares" is deemed to be replaced with "acceptance of assignment of the business or the fixed assets used for the business"; and the term "Acquiring Company" is deemed to be replaced with "company intending to accept assignment of the business or the fixed assets used for the business"; and in paragraph (10) of the same Article, the term "the acquisition of shares" is deemed to be replaced with "the acceptance of assignment of the business or the fixed assets used for the business."

Article 17 No person may engage in any act, irrespective of the name given to that act, that evades the prohibitions and restrictions provided for in the provisions of Articles 9 to 16 inclusive.

Article 17-2 (1) If an act in violation of the provisions of Article 10, paragraph (1); Article 11, paragraph (1); Article 15, paragraph (1); Article 15-2, paragraph (1); Article 15-3, paragraph (1); Article 16, paragraph (1); or the preceding Article has occurred, the Fair Trade Commission may, pursuant to the

procedures provided in Section 2 of Chapter VIII, order the enterprise concerned to dispose of all or some of its shares, transfer a part of its business or take any other measures necessary to eliminate the act in violation of the provisions.

- (2) If an act in violation of the provisions of Article 9, paragraph (1) or (2), Article 13, Article 14, or the preceding Article has occurred, the Fair Trade Commission may, pursuant to the procedures provided for in Section 2 of Chapter VIII, order the person violating the provisions to dispose of all or some of the person's shares, resign from the person's position as an officer of the company or take any other measures necessary to eliminate the act in violation of the provisions.

Article 18 (1) If companies have merged in violation of the provisions of Article 15, paragraph (2) and Article 10, paragraph (8) as applied mutatis mutandis pursuant to Article 15, paragraph (3) following the deemed replacement of terms, the Fair Trade Commission may bring an action to have the merger declared invalid.

- (2) The provisions of the preceding paragraph apply mutatis mutandis to when companies have effected a joint incorporation-type company split or an absorption-type split in violation of the provisions of Article 15-2, paragraph (2) and (3) and Article 10, paragraph (8) as applied mutatis mutandis pursuant to Article 15-2, paragraph (4) following the deemed replacement of terms. In this case, the term "action seeking invalidation of the merger" in the preceding paragraph is deemed to be replaced with "action seeking invalidation of the joint incorporation-type company split or the absorption-type split."

- (3) The provisions of paragraph (1) are applied mutatis mutandis to when companies have affected a joint share transfer in violation of provisions of Article 15-3, paragraph (2) and Article 10, paragraph (8) as applied mutatis mutandis pursuant to Article 15-3, paragraph (3) following the deemed replacement of terms. In this case, the term "action seeking invalidation of the merger" in paragraph (1) is deemed to be replaced with "action seeking invalidation of the joint share transfer."

#### **Chapter V Unfair Trade Practices**

Article 19 An enterprise must not employ unfair trade practices.

Article 20 (1) If an act in violation of the provisions of the preceding Article has occurred, the Fair Trade Commission may, pursuant to the procedures provided in Section 2 of Chapter VIII, order the enterprise to cease and desist from engaging in the relevant act, delete the relevant clauses from the contract, or take any other measure necessary to eliminate the relevant act.

- (2) The provisions of Article 7, paragraph (2) apply mutatis mutandis to an act in violation of the provisions of the preceding Article.

Article 20-2 If an enterprise under either of the following items has committed

an act in violation of the provisions of Article 19 (limited to acts that fall under Article 2, paragraph (9), item (i)), the Fair Trade Commission is to order the enterprise, pursuant to the procedures provided in Chapter VIII, Section 2, to pay to the national treasury a surcharge in an amount equivalent to three percent (two percent if the enterprise engages in retail business, or one percent if the enterprise engages in wholesale business) of the amount of sales for goods or services identical to those set forth in (a) of the same item that the relevant enterprise supplied, through the act in violation, to the competitor of an enterprise to which it refused to supply the goods or services or to which it supplied the goods or services in limited quantities or with a limited content (for an act in violation under the provisions of (b) of the same item, the amount of sales for goods or services identical to those set forth in (b) of the same item that the relevant enterprise supplied to the other enterprise prescribed in (b) of the same item (hereinafter referred to as the "Refusing Enterprise" in this Article) (including goods or services that were necessary in order for the Refusing Enterprise to supply the relevant type of goods or services), for goods or services identical to those that the enterprise supplied to the competitor of a enterprise to which the Refusing Enterprise refused to supply the goods or services or to which it supplied the goods or services in limited quantities or with a limited content, and for goods or services identical to those that the refusing company supplied to the relevant enterprise), which is calculated using the method prescribed by Cabinet Order, during the period from the date on which the enterprise began to engage in the act to the date on which it stopped engaging in the act (if this period exceeds three years, it is deemed to be the three years preceding the date on which the enterprise stopped engaging in the act); provided, however, that the Commission may not order the payment of such a surcharge if, with regard to the act in violation, the enterprise has received an order pursuant to the provisions of Article 7-2, paragraph (1) (including when these are applied mutatis mutandis pursuant to paragraph (2) of the same Article and to Article 8-3 following the deemed replacement of terms; the same applies in the following Article to Article 20-5 inclusive) or an order pursuant to the provisions of Article 7-2, paragraph (4) (limited to when the relevant order is final and binding; the same applies in Article 20-4 and Article 20-5), a notification pursuant to the provisions of Article 7-2, paragraph (18) or (21), or a decision pursuant to the provisions of Article 63, paragraph (2), or if the amount of surcharge pursuant to this Article is less than one million yen:

- (i) a person who received an order pursuant to the provisions of the preceding Article (limited to an order related to Article 2, paragraph (9), item (i); the same applies in the following item) or an order pursuant to the provisions of

this Article (limited to when the relevant order is final and binding; the same applies in the following item), within ten years before the date on which the measure listed in Article 47, paragraph (1), item (iv) was first made in relation to the case connected with the relevant violation (hereinafter referred to as "Investigation Start Date" in the following Article to Article 20-5 inclusive).

- (ii) if the measures listed in Article 47, paragraph (1), item (iv) were not taken, the person that was subject to an order pursuant to the provisions of the preceding Article or of this Article within the ten years prior to the date on which the relevant enterprise received advance notification in connection with the relevant violation.

Article 20-3 If an enterprise under either of the following items has committed an act in violation of the provisions of Article 19 (limited to an act that falls under Article 2, paragraph (9), item (ii), paragraph (9), item (ii)), the Fair Trade Commission must order the enterprise, pursuant to the procedures provided in Chapter VIII, Section 2, to pay to the national treasury a surcharge in an amount equivalent to three percent (two percent if the enterprise engages in retail business, or one percent if the enterprise engages in wholesale business) of the amount of sales for the goods or services under the same item that the enterprise supplied through the act in violation, which is calculated using the method provided by Cabinet Order, during the period from the date on which the enterprise began to engage in the act until the date on which it stopped engaging in the act (if this period exceeds three years, it is deemed to be the three years preceding the date on which the enterprise stopped engaging in the act); provided, however, that the Commission may not order the payment of such a surcharge if, with regard to the act in violation, the enterprise has received an order pursuant to the provisions of Article 7-2, paragraph (1) or (4) or provisions of the following Article (limited to when the relevant order is final and binding), a notification pursuant to the provisions of Article 7-2, paragraph (18) or (21), or a decision pursuant to the provisions of Article 63, paragraph (2), or if the amount of surcharge pursuant to this Article is less than one million yen:

- (i) a person who has received an order pursuant to the provisions of Article 20 (limited to an order related to Article 2, paragraph (9), item (ii); the same applies in the following item) or an order pursuant to the provisions of this Article (limited to when the relevant order is final and binding; the same applies in the following item), within ten years before the investigation start date.
- (ii) if the measures listed in Article 47, paragraph (1), item (iv) were not taken, a person that was subject to an order pursuant to the provisions of the Article 20 or of this Article within the ten years prior to the date on which

the relevant enterprise received advance notification in connection with the relevant violation.

Article 20-4 If an enterprise under either of the following items has committed an act in violation of the provisions of Article 19 (limited to an act that falls under Article 2, paragraph (9), item (iii)), the Fair Trade Commission must order the enterprise, pursuant to the procedures provided in Chapter VIII, Section 2, to pay to the national treasury a surcharge in an amount equivalent to three percent (two percent if the enterprise engages in retail business, or one percent if the enterprise engages in wholesale business) of the amount of sales for the goods or services provided in the same item that the enterprise supplied through the act in violation, which is calculated using the method provided by Cabinet Order, during the period from the date on which the enterprise first engaged in the act to the date on which it stopped engaging in the act (if this period exceeds three years, it is deemed to be the three years preceding the date on which the enterprise stopped engaging in the act); provided, however, that the Commission may not order the payment of such a surcharge if, with regard to the act in violation, the enterprise has received an order pursuant to the provisions of Article 7-2, paragraph (1) or (4), a notification pursuant to the provisions of paragraph (18) or (21) of the same Article, or a decision pursuant to the provisions of Article 63, paragraph (2), or if the amount of surcharge pursuant to this Article is less than one million yen:

- (i) a enterprise that was subject to an order pursuant to the provisions of Article 20 (limited to an order related to Article 2, paragraph (9), item (iii); the same applies in the following item) or an order pursuant to the provisions of this Article (limited to when the relevant order has become final and binding; the same applies in the following item), within ten years before the investigation start date.
- (ii) if the measure listed in Article 47, paragraph (1), item (iv) was not taken, an enterprise that was subject to an order pursuant to the provisions of Article 20 or of this Article within the ten years prior to the date on which the relevant enterprise received advance notification in connection with the violation.

Article 20-5 If an enterprise under either of the following items engages in an act in violation of the provisions of Article 19 (limited to an act that falls under Article 2, paragraph (9), item (iv)), the Fair Trade Commission must order the enterprise, pursuant to the procedures provided in Chapter VIII, Section 2, to pay to the national treasury a surcharge in an amount equivalent to three percent (two percent if the enterprise engages in retail business, or one percent if the enterprise engages in wholesale business) of the amount of sales for the goods or services under the same item that the

enterprise supplied through the act in violation, which is calculated using the method provided by Cabinet Order, during the period from the date on which the enterprise began to engage in the act to the date on which it stopped engaging in the act (if this period exceeds three years, it is deemed to be the three years preceding the date on which the enterprise stopped engaging in the act); provided, however, that the Commission may not order the payment of such a surcharge if, with regard to the act in violation, the enterprise has received an order pursuant to the provisions of Article 7-2, paragraph (1) or (4), a notification pursuant to the provisions of paragraph (18) or (21) of the same Article, or a decision pursuant to the provisions of Article 63, paragraph (2), or if the amount of surcharge pursuant to this Article is less than one million yen:

- (i) an enterprise that was subject to an order pursuant to the provisions of Article 20 (limited to an order related to Article 2, paragraph (9), item (iv); the same applies in the following item) or an order pursuant to the provisions of this Article (limited to when the order has become final and binding; the same applies in the following item), within ten years before the investigation start date.
- (ii) if the measures listed in Article 47, paragraph (1), item (iv) are not taken, an enterprise that was subject to an order pursuant to the provisions of Article 20 or of this Article within the ten years prior to the date on which the relevant enterprise received advance notification in connection with the relevant violation.

Article 20-6 If an enterprise has committed an act in violation of the provisions of Article 19 (limited to an act under Article 2, paragraph (9), item (v) that the enterprise engaged in on a continuous basis), the Fair Trade Commission must order the enterprise, pursuant to the procedures provided in Chapter VIII, Section 2, to pay to the national treasury a surcharge in an amount equivalent to one percent of the enterprise's sales to the counterparty to the act in violation, which is calculated using the method provided by Cabinet Order, for the period from the date on which the enterprise began implementing in the act to the date on which the enterprise discontinued implementing in the act (if this period exceeds three years, it is deemed to be the three years preceding the date on which the enterprise stopped engaging in the act) (if the enterprise engaged in the act in violation against a counterparty to which it supplied goods or services, a surcharge in an amount equivalent to one percent of the amount of purchases by the counterparty, which is calculated using the method provided by Cabinet Order, and if there were multiple counterparties to the act in violation, the surcharge in an amount equivalent to one percent of the total amount of sales to the counterparties or one percent of the total amount of purchases by the

counterparties, which is calculated using the method provided by Cabinet Order); provided, however, that the Commission may not order the payment of such a surcharge if the amount of the surcharge is less than one million yen.

Article 20-7 The provisions of paragraph (22) to (25) inclusive and Article 7-2, paragraph (27) are applied mutatis mutandis to when violations as provided in Article 20-2 to the preceding Article inclusive have been committed. In this case, in Article 7-2, paragraph (22), the term "paragraph (1) or (4)" is deemed to be replaced with "Article 20-2 to Article 20-6 inclusive"; and the term "paragraphs (1), (4) to (9) inclusive, (11), (12) or (19)" is deemed to be replaced with "these paragraphs"; in paragraph (23) of the same Article, the term "(1), (4) to (9) inclusive, (11), (12) or (19)" is deemed to be replaced with "Article 20-2 to Article 20-6 inclusive"; in paragraph (24) of the same Article, the term "paragraph (1), (2) or (4)" is deemed to be replaced with "Article 20-2 to Article 20-6 inclusive"; the term "and an order pursuant to the provisions of paragraph (1) (including when these are applied mutatis mutandis pursuant to paragraph (2) following the deemed replacement of terms) and paragraph (4), a notice pursuant to the provisions of paragraph (18) and paragraph (21), and a decision pursuant to the provisions of Article 63, paragraph (2) , received by the relevant juridical person (hereinafter referred to as 'Order, etc.' in this paragraph) is deemed as a violation committed by the juridical person surviving, or established as a result of the merger, or an Order, etc. received by the juridical person surviving, or established as a result of the merger" is deemed to be replaced with "is deemed as a violation committed by the juridical person surviving, or established as a result of the merger"; and the term "the preceding paragraphs and the following paragraph" is deemed to be replaced with "the preceding two paragraphs and the following paragraph as applied mutatis mutandis pursuant to Article 20-7 following the deemed replacement of terms, and of Article 20-2 to Article 20-6 inclusive"; in paragraph (25) of the same Article, the term "paragraph (1), (2) or (4)" is deemed to be replaced with "Article 20-2 to Article 20-6 inclusive"; the term "the violation committed by the relevant juridical person and the Order, etc. received by the relevant juridical person" is deemed to be replaced with "the violation"; the term "or to be an Order, etc. received by the subsidiary company, etc. that has succeeded to specified business, respectively" is deemed to be deleted; the term "the preceding paragraphs" is deemed to be replaced with "the preceding three paragraphs as applied mutatis mutandis pursuant to Article 20-7 following the deemed replacement of terms and Article 20-2 to Article 20-6 inclusive"; the term "the term 'order the relevant enterprise' appearing in paragraph (1) (including when these are applied mutatis mutandis pursuant to paragraph (2) following the deemed



replacement of terms)" is deemed to be replaced with "the term 'order the relevant enterprise' appearing in Article 20-2 to Article 20-6 inclusive"; the term "order subsidiary company, etc. that has succeeded to specified business (meaning the subsidiary company, etc. that has succeeded to specified business as provided in paragraph (25); the same applies hereinafter), jointly and severally with another subsidiary company, etc. that has succeeded to specified business and that has received an order pursuant to the provisions of this paragraph (including when these are applied mutatis mutandis pursuant to the following paragraph following the deemed replacement of terms),' the term 'order the relevant enterprise' appearing in paragraph (4) is deemed to be replaced with 'order subsidiary company, etc. that has succeeded to specified business, jointly and severally with another subsidiary company, etc. that has succeeded to specified business and that has received an order pursuant to the provisions of this paragraph'" is deemed to be replaced with "order subsidiary company, etc. that has succeeded to specified business, jointly and severally with another subsidiary company, etc. that has succeeded to specified business and that has received an order pursuant to the provisions of this Article"; the term "paragraph (22)" is deemed to be replaced with "paragraph (22) as applied mutatis mutandis pursuant to Article 20-7 following the deemed replacement of terms"; and the term "Any subsidiary company, etc. that has succeeded to specified business and that has received" is deemed to be replaced with "Any subsidiary company, etc. that has succeeded to specified business (meaning subsidiary company, etc. that has succeeded to specified business as provided in paragraph (25) as applied mutatis mutandis pursuant to Article 20-7 following the deemed replacement of terms; the same applies hereinafter in this paragraph)"; and in paragraph (27) of the same Article, the term "the end of the Period of implementation (or since the end of the Violation Period, for a violation stipulated in paragraph (4))" is deemed to be replaced with "the date on which the enterprise stopped engaging in the violation."

### **Chapter VI Exemptions**

Article 21 The provisions of this Act do not apply to acts found to constitute an exercise of rights under the Copyright Act, Patent Act, Utility Model Act, Design Act or Trademark Act.

Article 22 The provisions of this Act do not apply to acts by a partnership (including a federation of partnerships) which conforms to the requirements listed in each of the following items and which has been formed pursuant to the provisions of other Acts; provided, however, that this does not apply if unfair trade practices are employed, or if competition in any particular field of trade is substantially restrained, resulting in unjust price increases:

- (i) the purpose of the partnership is to provide mutual support to small-scale enterprise or consumers
- (ii) the partnership is voluntarily formed, and the partners may voluntarily participate in and withdraw from it
- (iii) each partner possesses equal voting rights
- (iv) if a distribution of profits among partners is contemplated, the limits of the distributions are prescribed by laws and regulations or in the articles of partnership

Article 23 (1) The provisions of this Act do not apply to legitimate acts engaged in by an enterprise that produces or sells a goodsdesignated by the Fair Trade Commission of easily recognizable uniform quality, in order to fix and maintain the resale price thereof with another enterprise that purchases such goods (this term "resale price" means the price at which the latter enterprise or an enterprise that purchases such a goods from the latter enterprise for sale sells it; the same applies hereinafter); provided, however, that this does not apply if the act tends to unreasonably harm the interests of general consumers, or if it is engaged in by an enterprise that sells the goods against the will of the enterprise that produces the goods.

(2) The Fair Trade Commission may not designate a goods under the provisions of the preceding paragraph unless each of the following items applies:

- (i) the goods is for daily use by general consumers
- (ii) free competition exists with respect to the goods

(3) The designation of a goods under the provisions of paragraph (1) is made via a public notice.

(4) Paragraph (1) also applies to legitimate acts engaged in by an enterprise that publishes works or an enterprise that sells such published works in order to fix and maintain the resale price thereof with another enterprise that purchases such works.

(5) Organizations formed pursuant to the provisions of any of the following Acts may not be included in another enterprise who purchases goods or works provided in paragraph (1) or the preceding paragraph; provided, however, that for organizations formed pursuant to the provisions of any of the Acts listed in items (vii) and (x), this only applies if a business cooperative, a minor business cooperative, a federation of cooperatives, a commercial and industrial partnership, or a federation of commercial and industrial partnerships purchases such goods as provided in paragraph (2) or such works as provided in the preceding paragraph, for the consumption of persons directly or indirectly constituting the relevant business cooperative, federation of cooperatives, commercial and industrial partnerships, or a federation of commercial and industrial partnerships:

- (i) National Public Service Act (Act No. 120 of 1947)

- (ii) Agricultural Cooperatives Act (Act No. 132 of 1947)
  - (iii) Consumer Cooperatives Act (Act No. 200 of 1948)
  - (iv) Fishery Cooperatives Act (Act No. 242 of 1948)
  - (v) Act on Labor Relationship of Specified Independent Administrative Agency, etc. (Act No. 257 of 1948)
  - (vi) Labor Union Act (Act No. 174 of 1949)
  - (vii) Small and Medium-Sized Enterprise Cooperatives Act (Act No. 181 of 1949)
  - (viii) Local Public Service Act (Act No. 261 of 1950)
  - (ix) Local Public Enterprise Labor Relationships Act (Act No. 289 of 1952)
  - (x) Act on the Organization of Small and Medium-Sized Enterprise Association (Act No. 185 of 1957)
  - (xi) National Public Officers Mutual Aid Association Act (Act No. 128 of 1958)
  - (xii) Local Public Officers, etc. Mutual Aid Association Act (Act No. 152 of 1962)
  - (xiii) Forestry Cooperatives Act (Act No. 36 of 1978)
- (6) If an enterprise as provided in paragraph (1) has entered into a contract that fixes and maintains the resale price as provided in the Rules of the Fair Trade Commission, notify the Fair Trade Commission thereof within thirty days from the date of the contract; provided, however, that this does not apply if otherwise prescribed by the Rules of the Fair Trade Commission.

#### **Chapter VII Injunctions and Damages**

Article 24 A person whose interests are infringed upon or likely to be infringed upon by an act in violation of the provisions of Article 8, item (v) or Article 19 and who is thereby suffering or likely to suffer extreme damage is entitled to seek the suspension or prevention of such infringements from an enterprise or a trade association that infringes upon or is likely to infringe upon such interests.

Article 25 (1) An enterprise that has committed an act in violation of the provisions of Articles 3, 6 or 19 (for enterprise that have committed acts in violation of the provisions of Article 6, limited to enterprises that have effected unreasonable restraint of trade or employed unfair trade practices in the international agreement or contract concerned) and any trade association that has committed an act in violation of the provisions of Article 8 is liable for damages suffered by another party.

(2) No enterprise or trade association may be exempted from the liability provided in the preceding paragraph by proving the non-existence of intention or negligence on its part.

Article 26 (1) The right to claim damages under to the provisions of the preceding Article may not be asserted in court until the Cease and Desist Order provided for in the provisions of Article 49 (if no such order has been issued, the

Payment Order provided in Article 62, paragraph (1) (excluding those issued against an enterprise that constitutes a trade association that has committed an act in violation of the provisions of Article 8, item (i) or (ii))) has become final and binding.

- (2) The right set forth in the preceding paragraph expires by prescription after a lapse of three years from the date on which the Cease and Desist Order or the Payment Order set forth in the same paragraph became final and binding.

## **Chapter VIII Fair Trade Commission**

### **Section 1 Establishment, Duty, Affairs under the Jurisdiction and Organization, Etc.**

Article 27 (1) The Fair Trade Commission, which has the duty to achieve the purpose set forth in Article 1, is hereby established pursuant to the provisions of Article 49, paragraph (3) of the Act for Establishment of the Cabinet Office (Act No. 89 of 1999).

- (2) The Fair Trade Commission is administratively attached to the office of the Prime Minister.

Article 27-2 In order to perform the duty set forth in paragraph (1) of the preceding Article, the Fair Trade Commission takes charge of the following administrative affairs:

- (i) those concerning regulations on private monopolization
- (ii) those concerning regulations on unreasonable restraint of trade
- (iii) those concerning regulations on unfair trade practices
- (iv) those concerning regulations on monopolistic situations
- (v) those concerning international company in administrative affairs under the jurisdiction of the Fair Trade Commission
- (vi) administrative affairs that are assigned to the Fair Trade Commission pursuant to an Act (including an order pursuant to an Act), in addition to what is listed in any of the preceding items

Article 28 The chairman and commissioners of the Fair Trade Commission exercise their authority independently.

Article 29 (1) The Fair Trade Commission consists of a chairman and four commissioners.

- (2) The chairman and commissioners are appointed by the Prime Minister with the consent of both Houses of the Diet from among persons aged thirty-five or above who have knowledge and experience in law or economics.
- (3) The appointment and dismissal of the chairman is certified by the Emperor.
- (4) The chairman and commissioners are public officials.

Article 30 (1) The term of office of the chairman and commissioners is five years. However, the term of office of a chairman or commissioner appointed to fill a vacancy is the remaining term of office of the chairman or commissioner's predecessor.

- (2) The chairman and commissioners may be reappointed.
- (3) The chairman and commissioners retire from office upon reaching the age of seventy.
- (4) If the term of office of the chairman or commissioner expires, or a vacancy occurs at a time when the consent of both Houses of the Diet cannot be obtained because the Diet is not in session or the House of Representatives has been dissolved, the Prime Minister may appoint a chairman or commissioner from among persons who have the qualifications provided in paragraph (2) of the preceding Article. In this case, the subsequent approval of both Houses of the Diet must be obtained in the first session of the Diet after the appointment.
- Article 31 A chairman or commissioner may not be dismissed from office against the chairman or commissioner's will, except in cases falling under any of the following items:
- (i) a decision of the commencement of bankruptcy proceedings has been made against the chairman or commissioner
  - (iii) the chairman or commissioner has been punished for violation of the provisions of this Act
  - (iv) the chairman or commissioner has been punished by imprisonment without work or severer punishment
  - (v) the Fair Trade Commission has decided that the chairman or commissioner is incapable of executing the chairman or commissioner's duties due to mental or physical disorder
  - (vi) the subsequent approval of both Houses of the Diet could not be obtained in a case under paragraph (4) of the preceding Article

Article 32 In a case under items (i) or (iii) to (vi) inclusive of the preceding Article, the Prime Minister must dismiss the chairman or commissioner concerned from office.

Article 33 (1) The chairman presides over the Fair Trade Commission and represents it.

- (2) The Fair Trade Commission must designate in advance an acting chairman from among the commissioners in case where the chairman cannot execute the chairman's duties.

Article 34 (1) No meeting of the Fair Trade Commission may be held, nor may a resolution be effected without the attendance of the chairman and two or more commissioners.

- (2) A Fair Trade Commission's decision is effected by a majority of the attendees. In the event of a tie vote, the chairman is to decide.
- (3) Notwithstanding the provisions of the preceding paragraph, a Fair Trade Commission decision under the provisions of Article 31, item (v) must have unanimous concurrence by all commissioners and the chairman except for the commissioner or chairman concerned.

(4) For the purpose of applying the provisions of paragraph (1) in the case where the chairman cannot execute the chairman's duties, the commissioner chosen to act on behalf of the chairman pursuant to the provisions of paragraph (2) of the preceding Article is deemed to be the chairman.

Article 35 (1) A general secretariat is hereby established for the Fair Trade Commission for the purpose of the administration of its affairs.

(2) The general secretariat is headed by a secretary general.

(3) The secretary general presides over the administrative affairs of the general secretariat.

(4) The secretariat and bureaus are hereby established in the general secretariat.

(5) The provisions of paragraphs (2) to (8) inclusive of Article 17 of the Act for Establishment of the Cabinet Office apply mutatis mutandis to the establishment, the scope of the affairs under the jurisdiction, and the internal organization of the secretariat and bureaus referred to in the preceding paragraph.

(6) The secretariat and bureaus established pursuant to the provisions of paragraph (4) do not exceed three in number.

(7) A public prosecutor, an attorney practicing at the time of the appointment or a person qualified to be an attorney must be among the staff members of the general secretariat.

(8) The duties of the staff member who is the public prosecutor referred to in the preceding paragraph are limited to duties related to cases of violation of the provisions of this Act.

Article 35-2 (1) Local offices are established at necessary locations as local organizations of the general secretariat of the Fair Trade Commission.

(2) The names, locations and jurisdictional districts of the local offices referred to in the preceding paragraph are provided by Cabinet Order.

(3) Branches may be established at necessary locations under the local offices referred to in paragraph (1) to conduct some of the affairs of the local offices.

(4) The names, locations and jurisdictional districts of the branches referred to in the preceding paragraph are provided by Cabinet Office Ordinance.

Article 36 (1) The remuneration of the chairman and commissioners are provided for separately.

(2) The remuneration of the chairman and commissioners may not, against their will, be reduced in amount while they are in office.

Article 37 The chairman, the commissioners and the staff members of the Fair Trade Commission prescribed by Cabinet Order may not engage in any of the following acts while they are in office:

(i) becoming a member of the Diet or of the council of a local public entity, or actively engaging in political activities

(ii) engaging in any other remunerative duties except as permitted by the

Prime Minister

(iii) engaging in commerce or any other business for monetary profit

Article 38 The chairman, commissioners and staff members of the Fair Trade Commission must not express their opinions outside the Fair Trade Commission on the existence or non-existence of facts or the application of laws and regulations with regard to a case; provided, however, this does not apply to a case provided for in this Act or to a case in which the results of their research on this Act are published.

Article 39 The chairman, commissioners and staff members of the Fair Trade Commission and any person who once held such a position must not divulge to others or make surreptitious use of the secrets of enterprises that came to their knowledge in the course of their duties.

Article 40 The Fair Trade Commission may, if necessary for the performance of its duties, order public offices, juridical persons formed by special laws and regulations, enterprises or organizations of enterprises, or their personnel to appear before the Fair Trade Commission, or require them to submit necessary reports, information or materials.

Article 41 The Fair Trade Commission may, if necessary for the performance of its duties, commission public offices, juridical persons formed by special laws and regulations, schools, enterprises, organizations of enterprises, persons with the relevant knowledge and experience, or others to carry out necessary investigations.

Article 42 The Fair Trade Commission may, if necessary for the performance of its duties, hold public hearings to obtain the opinions of the public.

Article 43 The Fair Trade Commission may, in order to ensure the proper operation of this Act, make any necessary matters public except for the secrets of enterprises.

Article 43-2 (1) The Fair Trade Commission may provide any foreign authority responsible for enforcement of any foreign laws and regulations equivalent to those of this Act (hereinafter referred to in this Article as a "Foreign Competition Authority") with information that is deemed helpful and necessary for the execution performance of the Foreign Competition Authority's duties (limited to duties equivalent to those of the Fair Trade Commission as provided in this Act; the same applies in the following paragraph); provided, however, that this does not apply if the provision of the relevant information is found likely to interfere with the proper execution of this Act or to infringe on the interests of Japan in any other way.

(2) Whenever the Fair Trade Commission provides information to a Foreign Competition Authority pursuant to the provisions of the preceding paragraph, the Fair Trade Commission must confirm the matters listed in the following

items:

- (i) that the relevant Foreign Competition Authority is capable of providing information equivalent to the information provided pursuant to the provisions of the preceding paragraph
  - (ii) that the secrecy of information provided as secret pursuant to the provisions of the preceding paragraph will be protected under the laws and regulations of the relevant foreign country to a degree that is equivalent to the degree to which the secrecy of such information is protected in Japan
  - (iii) that the information provided pursuant to the provisions of the preceding paragraph will not be used by the relevant Foreign Competition Authority for purposes other than those contributing to the performance of its duties
- (3) Appropriate measures must be taken so that the information provided pursuant to the provisions of paragraph (1) is not used for criminal proceedings undertaken by a court or a judge in a foreign country.

Article 44 (1) The Fair Trade Commission must report annually to the Diet, through the Prime Minister, on the enforcement of this Act.

(2) The Fair Trade Commission may submit to the Diet, through the Prime Minister, its opinions on matters necessary to attain the purpose of this Act.

### **Section 2 Proceedings**

Article 45 (1) Whenever any person believes there to be a fact in violation of the provisions of this Act, the person may report the fact to the Fair Trade Commission and ask for appropriate measures to be taken.

(2) When the Fair Trade Commission receives a report as provided in the preceding paragraph, it must make the necessary investigations into the case.

(3) If a report made pursuant to the provisions of paragraph (1) includes a written allegation with regard to a specific fact pursuant to the provisions of the Rules of the Fair Trade Commission, when the Fair Trade Commission decides to take appropriate measures or to take no measures with respect to the case connected with the report, the Fair Trade Commission must promptly notify the person who made the report to that effect.

(4) Whenever the Fair Trade Commission believes there to be a fact in violation of the provisions of this Act or a fact falling under the purview of a monopolistic situation, the Fair Trade Commission may take appropriate measures on its own authority.

Article 46 (1) If the Fair Trade Commission believes there to be a fact that falls under the purview of a monopolistic situation and decides to take the measures set forth in paragraph (4) of the preceding Article, the Fair Trade Commission must notify the competent minister for the business that the enterprise concerned operates to that effect.

(2) When a notice set forth in the preceding paragraph has been given, the competent minister may express the competent minister's opinion to the Fair



Trade Commission regarding the existence or non-existence of a monopolistic situation and other measures that the competent minister considers sufficient to restore competition as provided in the proviso to Article 8-4, paragraph (1).

Article 47 (1) In order to conduct the necessary investigation with regard to a case, the Fair Trade Commission may take the following measures:

- (i) order persons concerned with a case or witness to appear to be interrogated, or collect their opinions or reports
  - (ii) order expert witnesses to appear to give expert opinions
  - (iii) order persons holding books and documents and other object to submit such objects, or keep such submitted objects at the Fair Trade Commission
  - (iv) enter any business office of the persons concerned with a case or other necessary sites, and inspect conditions of business operation and property, books and documents, and other materials
- (2) If the Fair Trade Commission finds it to be appropriate, it may designate a staff member of the Fair Trade Commission as an investigator pursuant to Cabinet Order, and cause the staff member to take the measures set forth in the preceding paragraph.
- (3) If the Fair Trade Commission causes a staff member to conduct an on-site inspection pursuant to the provisions of the preceding paragraph, the Fair Trade Commission must instruct the staff member to carry an identification card and to present it to the persons concerned.
- (4) The authority to take measures pursuant to the provisions of paragraph (1) must not be construed as being granted for conducting criminal investigation.

Article 48 Whenever the Fair Trade Commission conducts the necessary investigations for a case, it is to compile a record of the substance of the investigation, and whenever it takes a measure provided in paragraph (1) of the preceding Article, it must clearly record the date on which the measure was taken and the results thereof.

Article 48-2 If the Fair Trade Commission believes there to be a fact in violation of the provisions of Article 3, Article 6, Article 8, Article 9 (1) or (2), Article 10 (1), Article 11 (1), Article 13, Article 14, Article 15 (1), Article 15-2 (1), Article 15-3 (1), Article 16 (1), Article 17 or Article 19 and recognizes that it is necessary for promotion of fair and free competition, it may notify the party conducting the act that was the reason for that suspicion of the following matters in writing. Provided, however, that this does not apply after notice under the provisions of Article 50 (1) (including when these are applied mutatis mutandis pursuant to Article 62 (4) following the deemed replacement of terms) was made.

- (i) the overview of the relevant act
- (ii) the clause of laws and regulations for which there is suspicion of violation

(iii) the fact that it is possible to make an application for approval under the provisions of Article 48-3 (1)

Article 48-3 (1) When a party that has received a notice pursuant to the provisions of the previous article intends to formulate and conduct measures that are necessary in order to exclude the act that was the reason for the suspicion, it may create a plan (hereinafter referred to as the “Exclusion Measures Plan” in this article and Article 48-5) related to the measures that it intends to conduct (hereinafter referred to as the “Exclusion Measures” in this article to Article 48-5 ), submit that plan to the Fair Trade Commission within sixty days after the relevant notice and apply for its approval, pursuant to the provisions of the Rules of the Fair Trade Commission.

(2) The Exclusion Measures Plan must contain the following:

- (i) the content of the Exclusion Measures
- (ii) the deadline for conducting the Exclusion Measures
- (iii) other matters specified by the Rules of the Fair Trade Commission

(3) When there has been an application for approval pursuant to the provisions of paragraph(1), the Fair Trade Commission is to approve the plan if the Fair Trade Commission finds that Exclusion Measures Plan conforms to both of the following items.

- (i) the Exclusion Measures are sufficient for excluding the act that was the reason for the suspicion.
- (ii) the Exclusion Measures are expected to be reliably conducted.

(4) The approval of the preceding paragraph must be rendered in writing, and the chairman and the commissioners who attended the meeting pursuant to the provisions of Article 65 (1) must affix their names and seals on the statement of approval.

(5) The approval under the provisions of paragraph(3) is to take effect by serving a copy of the statement of approval on addressee thereof.

(6) When there has been an application for approval pursuant to the provisions of paragraph(1) has been made, the Fair Trade Commission must render a decision to dismiss it if the Fair Trade Commission finds that Exclusion Measures Plan does not conform to any of the items of paragraph(3).

(7) The provisions of paragraphs(4) and (5) apply mutatis mutandis to a decision pursuant to the provisions of preceding paragraph. In such a case, the term “statement of approval” in paragraphs(4) and (5) is deemed to be replaced with “statement of decision.”

(8) When a party that has received the approval of paragraph(3) intends to change the Exclusion Measures Plan related to that approval, it must receive approval by the Fair Trade Commission, pursuant to the provisions of the Rules of the Fair Trade Commission.

(9) The provisions of paragraphs(3) to (7) apply mutatis mutandis to approval for changes pursuant to the provisions of preceding paragraph.

Article 48-4 The provisions of Article 7 (1) and (2) (including when these are applied mutatis mutandis pursuant to Article 8-2 (2) and Article 20 (2)), Article 7-2 (1) (including when these are applied mutatis mutandis pursuant to Article 7-2 (2) and Article 8-3 following the deemed replacement of terms), Article 7-2 (4), Article 8-2 (1) and (3), Article 17-2, Article 20 (1), and Article 20-2 to Article 20-6 shall not apply for the act that was the reason for suspicion related to that approval and the act related to the Exclusion Measures, if the Fair Trade Commission gave the approval of paragraph (3) of the preceding Article (including approval for changes pursuant to Article 48-3 (8); the same applies in Article 48-5, Article 65, Article 68 (1), and Article 76(2)). Provided, however, that this does not apply if there is a decision pursuant to the provisions of paragraph(1) of the following Article.

Article 48-5 (1) When either of the following items applies, the Fair Trade Commission must render a decision to rescind the approval of Article 48-3 (3).

(i) when the Fair Trade Commission recognizes that the Exclusion Measures are not being conducted according to the Exclusion Measures Plan that received the approval of Article 48-3 (3)

(ii) when it has been revealed that the party that received the approval of Article 48-3 (3) received that approval based on false or wrongful facts

(2) The provisions of Article 48-3 (4) and (5) apply mutatis mutandis to a decision pursuant to the provision of the preceding paragraph. In such a case, the term “statement of approval” in Article 48-3 (4) and (5) is deemed to be replaced with “statement of decision.”

(3) In the event that there has been rescission of the approval of Article 48-3 (3) pursuant to the provisions of paragraph(1), when that rescission was on or after the date two years before the expiration date of the period stipulated in proviso to Article 7 (2) (including when these are applied mutatis mutandis pursuant to Article 8-2 (2) and Article 20 (2); the same applies hereinafter in this paragraph), an order pursuant to the provisions of Article 7 (2) (including when these are applied mutatis mutandis pursuant to Article 8-2 (2) and Article 20 (2)) or Article 8-2 (3) may be issued for the act that was the reason for the suspicion related to that approval, notwithstanding the provisions of proviso to Article 7 (2), within the two-year period from the date of the decision for rescission.

(4) The provisions of the preceding paragraph apply mutatis mutandis to the order pursuant to the provisions of Article 7-2 (1) (including when these are applied mutatis mutandis pursuant to Article 7-2 (2) and Article 8-3 following the deemed replacement to term) and (4), or Article 20-2 to Article 20-6. In such a case, in the preceding paragraph, the term “proviso to Article 7 (2)(...

pursuant to Article 8-2 (2) and Article 20 (2)” is deemed to be replaced with “the provision of proviso to Article 7-2 (27) (... pursuant to Article 8-3 and Article 20-7,the term “proviso to Article 7(2)” is deemed to be replaced with “notwithstanding the provision of Article 7-2 (27).”

Article 48-6 Whenever the Fair Trade Commission finds it to be particularly necessary for promotion of fair and free competition,even if the act that was the reason for the suspicion of violation of the provisions of Article 3, Article 6, Article 8, or Article 19 has already ceased to exist, it may notify the party stated in item 1 in the form of a document of the matters in item 2 in writing. Provided, however, that this does not apply after notice was made pursuant to the provisions of Article 50 (1) (including when these are applied mutatis mutandis pursuant to 62 (4) following the deemed replacement of term).

(i) the following party

- (a) the party who committed the act that was the reason for the suspicion
- (b) if the party who committed the act that was the reason for the suspicion is a juridical person, any juridical person surviving, or established as a result of the merger the juridical person ceased to exist
- (c) if the party who committed the act that was the reason for the suspicion is juridical person, any juridical person who has acquired all or part of the business involving the relevant act from the juridical person by virtue of a company spilt
- (d) any party who acquired all or part of the business involving the relevant act from the party who committed the act that was the reason for the suspicion

(ii) the following matters

- (a) overview of the act that was the reason for the suspicion
- (b) clause of the laws and regulations for which there was suspicion of violation
- (c) the fact that it is possible to make an application for approval under the provisions of Article 48-7 (1)

Article 48-7 (1) When a party who has received a notice pursuant to the provisions of the previous article intends to formulate and conduct measures that are necessary in order to ensure that the act that was the reason for suspicion has been excluded, it may create a plan (hereinafter referred to as “Plan for Measures to Ensure Exclusion” in this article and Article 48-9 ) related to the measures that it intends to conduct (hereinafter referred to as “Measures to Ensure Exclusion” in this article to Article 48-9 ), submit that plan to the Fair Trade Commission within sixty days after the relevant notice, and apply for approval, pursuant to according to the provisions of the Rules of the Fair Trade Commission.

(2)The Plan for Measures to Ensure Exclusion must contain the following:.

- (i) the content of the Measures to Ensure Exclusion
  - (ii) the deadline for conducting the Measures to Ensure Exclusion
  - (iii) other matters specified by the Rules of the Fair Trade Commission
- (3) When there has been an application for approval pursuant to the provisions of Article 48-7 (1), the Fair Trade Commission is to approve the plan if the Fair Trade Commission finds that Plan for Measures to Ensure Exclusion conforms to both of the following items,
- (i) The Measures to Ensure Exclusion are sufficient for ensuring that the act that was the reason for the suspicion was excluded.
  - (ii) The Measures to Ensure Exclusion are expected to be reliably conducted.
- (4) The provisions of Article 48-3 (4) and (5) apply mutatis mutandis to the approval pursuant to the provisions of the preceding paragraph.
- (5) When there has been an application for approval pursuant to the provisions of paragraph(1) has been made, the Fair Trade Commission must render a decision to dismiss it if the Fair Trade Commission finds that Plan for Measures to Ensure Exclusion does not conform to any of the items of paragraph(3).
- (6) The provisions of Article 48-3 (4) and (5) apply mutatis mutandis to a decision pursuant to the provision of the preceding paragraph. In such a case, the term “statement of approval” in Article 48-3 (4) and (5) is deemed to be replaced with “statement of decision.”
- (7) When a party that has received the approval of paragraph(3) intends to change the Plan for Measures to Ensure Exclusion related to that approval, it must receive approval by the Fair Trade Commission, pursuant to the provisions of the Rules of the Fair Trade Commission.
- (8) The provisions of paragraphs(3) to (6) apply mutatis mutandis to approval for changes pursuant to the provision of the preceding paragraph.
- Article 48-8 The provision of Article7(1) and (2)(including when these are applied mutatis mutandis pursuant to Article8-2(2) and Article20(2)), Article7-2(1)(including when these are applied mutatis mutandis pursuant to Article7(2) and Article8-3 following the deemed replacement of term) and (4),Article8-2(1) and (3),Article20(1),and Article20-2 to Article20-6 shall not apply for the act that was the reason for the suspicion related to that approval and the act related to the Measures to Ensure Exclusion, if the Fair Trade Commission gave the approval of Article 48-7 (3) (including approval for changes pursuant to the provisions of Article 48-7 (7); the same applies in the following Article65,Article68(2) and Article76(2)). Provided, however, that this does not apply if there is a decision pursuant to the provisions of paragraph(1) of following Article.
- Article 48-9 (1) When either of the following items applies, the Fair Trade Commission must render a decision to rescind the approval of Article 48-7 (3).

- (i) When the Fair Trade Commission recognizes that the Measures to Ensure Exclusion are not being conducted according to the Plan for Measures to Ensure Exclusion that received the approval of Article 48-7 (3).
  - (ii) When it has been revealed that the party that received the approval of Article 48-7 (3) received that approval based on false or wrongful facts.
- (2) The provisions of Article 48-3 (4) and (5) apply mutatis mutandis to a decision pursuant to the provision of preceding paragraph. In such a case, the term “statement of approval” in Article 48-3 (4) and (5) is deemed to be replaced with “statement of decision.”
- (3) In the event that there has been rescission of the approval of Article 48-7 (3) pursuant to the provisions of paragraph(1), when that rescission was on or after the date two years before the expiration date of the period stipulated in proviso to Article 7 (2) (including when these are applied mutatis mutandis pursuant to Article 8-2 (2) and Article 20 (2); the same applies hereinafter in this paragraph) , an order pursuant to the provisions of Article 7 (2) (including when these are applied mutatis mutandis pursuant to Article 8-2 (2) and Article 20 (2)) or Article 8-2 (3) may be issued for the act that was the reason for the suspicion related to that approval, notwithstanding the provisions of proviso to Article 7 (2) ,within the two-year period from the date of the decision for that rescission.
- (4) The provisions of the preceding paragraph apply mutatis mutandis to the order pursuant to provisions of Article 7-2 (1) (including when these are applied mutatis mutandis pursuant to Article 7-2 (2) and Article 8-3 following the deemed replacement of term) and(4), or Article 20-2 to Article 20-6. In such a case, in preceding paragraph,the term “proviso to Article7(2)(... pursuant to Article8-2(20) and Article20(2)” is deemed to be replaced with “the provision of Article7-2(27)(... pursuant to Article 8-3 and Article 20-7” and the term “the provision of proviso to Article 7 (2)” is deemed to be replaced with “notwithstanding the provision of Article 7-2 (27)”.

Article 49 If the Fair Trade Commission seeks to issue an order pursuant to the provisions of Article 7, paragraphs (1) or (2) (including when they are applied mutatis mutandis pursuant to Article 8-2, paragraph (2) and Article 20, paragraph (2)); Article 8-2, paragraphs (1) or (3); Article 17-2; or Article 20, paragraph (1) (hereinafter referred to as a "Cease and Desist Order"), it must conduct a hearing of opinions with the would-be addressee of the Cease and Desist Order.

Article 50 (1) In a hearing set forth in the preceding Article, the Fair Trade Commission must notify the would-be addressee of the Cease and Desist Order of the following matters in writing, by a reasonable period of time prior to the date of hearing:

- (i) the expected contents of the Cease and Desist Order
- (ii) the facts found by the Fair Trade Commission, and the application of laws and regulations thereto

(iii) the date and place of hearing

(iv) the name and location of the organization which has jurisdiction over affairs relating to hearing

(2) The written notice set forth in the preceding paragraph must inform the following matters:

(i) that the would-be addressee of the Cease and Desist Order may state its opinions and submit evidence on the date of hearing or submit a written statement and evidence instead of appearance on the date of hearing.

(ii) that the would-be addressee of the Cease and Desist Order, until the conclusion of the hearing, may request inspection and a copy of evidence pursuant to the provisions of Article 52.

Article 51 (1) The person who has received the notice set forth in paragraph (1) of the preceding Article (hereinafter referred to as the "Party" in this Section) may appoint agents.

(2) Agents may perform any act relating to an individual hearing on behalf of the Party.

Article 52 (1) The Party may, between the time when notice of a hearing is given pursuant to Article 50, paragraph (1) and the time when the hearing is concluded, submit a request to the Fair Trade Commission to inspect or copy the evidence proving the facts found by the Fair Trade Commission with respect to the case for hearing (as for copy, only limited to evidence prescribed by the Rules of the Fair Trade Commission as one that was submitted by the relevant Party or its employees or that records the statements of the relevant Party or its employees; hereinafter the same applies in this Article). In this case, the Fair Trade Commission may not refuse the inspection or copy unless this is likely to infringe on the interests of a third party or unless there are any other justifiable grounds.

(2) The provisions of preceding paragraph do not preclude the Party from further requesting inspection or copy of the evidence, which becomes necessary in the course of the procedures for hearing.

(3) The Fair Trade Commission may designate the date, time and place for inspection or copy set forth in the preceding two paragraphs.

Article 53 (1) The procedures for hearing is to be presided by the staff member designated by the Fair Trade Commission for each case (hereinafter referred to as the "Designated Staff Member").

(2) The Fair Trade Commission may not designate any staff member who performed the duties of an investigator with respect to the case pursuant to the preceding paragraph and any other staff members who conducted the administrative affairs pertaining to investigations into the relevant case as the presiding staff member for hearing.

Article 54 (1) The Designated Staff Member is to have the investigators designated pursuant to Article 47, paragraph (2) with respect to the case for which the procedures for hearing must be taken and any other staff members who conducted the administrative affairs pertaining to investigations into the relevant case (in the following paragraph and paragraph (3), and Article 56, paragraph (1), referred to as the "investigators, etc.")

explain to the Party appearing on the date of hearing the expected content of the Cease and Desist Order, the facts found by the Fair Trade Commission and major evidence among those provided for Article 52, paragraph (1), and the application of laws and regulations to the facts found by the Fair Trade Commission at the outset of the first date of the hearing.

(2) The Party may appear on the date of hearing, state its opinions and submit evidence and also address questions to the investigators, etc. with the permission of the Designated Staff Member.

(3) When the Designated Staff Member finds it necessary on the date of hearing, the Designated Staff Member may address questions to parties, call upon them to state their opinions or submit evidence or request explanation from the investigators, etc.

(4) The proceedings on the date of hearing is not open to the public.

Article 55 The Party may, instead of appearing on the date of hearing, submit written statements and evidence to a Designated Staff Member on or before the date of hearing.

Article 56 (1) The Designated Staff Member may, when it is found necessary to continue the hearing as a result of the statement of opinions, submission of evidence, and questions by the Party, and explanation by the investigators, etc., (in Article 58, paragraphs (1) and (2), referred to as the "statements, etc. by the party"), assign a date for continuation.

(2) In the case referred to in the preceding paragraph, the parties must be given, in advance, notice in writing of the date and the location of the next hearing. However, it would be sufficient to notify parties who appeared on the date of hearing of the above matters which is made on the date of hearing.

Article 57 (1) The Designated Staff Member may, where the parties fail to appear on the date of a hearing without justifiable grounds and to submit written statements or evidence pursuant to Article 55, conclude the hearing without giving any further opportunity for the party to state its opinions and submit evidence.

(2) In addition to the case pursuant to the preceding paragraph, in cases where the parties fail to appear on the date of the hearing and do not submit written statements or evidence pursuant to Article 55, and when the Party is not expected to appear on a date for hearing for a considerable substantial period of time, the Designated Staff Member may ask submission of written statements and evidence of them with the due date, and conclude the hearing when the due date falls.

Article 58 (1) The Designated Staff Member is to prepare a record of the proceedings of the statement of opinions by the Party, etc. on the date of hearing and the record must clearly indicate the outline of the statements raised by parties concerned with respect to the matters listed in Article 50, paragraph (1), items (i) and (ii).

(2) The record set forth in the preceding paragraph must be prepared on each date of the hearing when the statement, etc. by the Party is conducted, and where the statement, etc. by the Party is not conducted, promptly after the hearing is concluded.

(3) The record pursuant to paragraph (1) must be accompanied by the evidence submitted (the written statements and evidence submitted, when written statements and evidence are submitted pursuant to Article 55).



(4) The Designated Staff Member must, promptly after the hearing is concluded, identify the issues of the case for a hearing, prepare a written report containing the relevant issues and submit it to the Fair Trade Commission together with the record pursuant to paragraph (1).

(5) Parties concerned may demand inspection of the record pursuant to paragraph (1) and the written report pursuant to the preceding paragraph.

Article 59 (1) The Fair Trade Commission may, when it finds necessary in light of the circumstances arising after conclusion of the hearing, order the Designated Staff Member to reopen a hearing by returning to the Designated Staff Member the report submitted pursuant to the preceding Article, paragraph (4).

(2) The provisions of the main clause of Article 56, paragraph (2) apply mutatis mutandis to the case of the preceding paragraph.

Article 60 In making a resolution pertaining to the cease and desist order, the Fair Trade Commission must do so only after careful consideration of the contents of the record pursuant to Article 58, paragraph (1) and the report pursuant to Article 58.

Article 61 (1) A Cease and Desist Order must be rendered in writing, and the written Cease and Desist Order is to indicate the measures necessary to eliminate the violation or to ensure that the violation is eliminated, and the facts found by the Fair Trade Commission and the application of laws and regulations thereto, and the chairman and commissioners who attended the meeting pursuant to the provisions of Article 65, paragraph (1) must affix their names and seals thereto.

(2) A Cease and Desist Order is to take effect by serving a copy of the written Cease and Desist Order to the addressee thereof.

Article 62 (1) An order issued pursuant to the provisions of paragraph (1) (including when these are applied mutatis mutandis pursuant to Article 7-2, paragraph (2) and Article 8-3 following the deemed replacement of terms ) or paragraph (4) of Article 7-2, or Articles 20-2 to 20-6 inclusive (hereinafter referred to as a "Payment Order") must be rendered in writing, and the written Payment Order for a surcharge is to state the amount of the surcharge to be paid, the basis of its calculation, the violation to which it pertains, and the time limit for payment, and the chairman and commissioners who attended the meeting pursuant to the provisions of Article 65, paragraph (1) must affix their names and seals thereto.

(2) A Payment Order is to take effect upon service of a copy of the written Payment Order for a surcharge on the addressee thereof.

(3) The time limit for payment of the surcharge set forth in paragraph (1) is to fall on the day on which seven months have elapsed from the day on which the copy of the written Payment Order for a surcharge is issued.

(4) The provisions of Articles 49 to 60 inclusive apply mutatis mutandis to the Payment Order. In this case, in Article 50, paragraph (1), item (i), the term "The expected contents of the Cease and Desist Order" is deemed to be replaced with "Amount of the surcharge

intended to be ordered to be paid"; the term "The facts found by the Fair Trade Commission, and the application of laws and regulations thereto" in item (ii) of the same paragraph and the term "the facts found by the Fair Trade Commission" in Article 52, paragraph (1) is deemed to be replaced with "The basis of calculation of the surcharge and the violation related to the surcharge"; in Article 54, paragraph (1), the term "the expected content of the Cease and Desist Order, the facts found by the Fair Trade Commission and major evidence among those provided for Article 52, paragraph (1), and the application of laws and regulations to the facts found by the Fair Trade Commission" is deemed to be replaced with "Amount of the surcharge intended to be ordered to be paid, the basis of calculation of the surcharge and the violation related to the surcharge, and major evidence among those pursuant to Article 52, paragraph (1) as applied mutatis mutandis pursuant to Article 62, paragraph (4) following the deemed replacement of terms."

Article 63 (1) After the Fair Trade Commission has issued a Payment Order pursuant to the provisions of Article 7-2, paragraph (1) (including when these are applied mutatis mutandis pursuant to paragraph (2) of the same Article following the deemed replacement of terms; the same applies in the following paragraph) or paragraph (4), if a final and binding decision on the same case imposes a fine on the person who received the relevant Payment Order, the Fair Trade Commission must issue a decision to modify the amount of the surcharge in the Payment Order by reducing the amount thereof by an amount equivalent to one-half of the amount of the fine imposed in the final and binding decision; provided, however, that this does not apply if the amount of the surcharge in the Payment Order does not exceed the amount equivalent to one-half of the amount of the fine or if the amount after the modification is less than one million yen.

(2) In the case under the proviso to the preceding paragraph, the Fair Trade Commission must render a decision to rescind the Payment Order pursuant to the provisions of Article 7-2, paragraphs (1) or (4).

(3) A decision under the provisions of the preceding two paragraphs must be rendered in writing, and the written decision is to indicate the facts found by the Fair Trade Commission and the application of laws and regulations thereto, and the chairman and commissioners who attended the meeting pursuant to the provisions of Article 65, paragraph (1) must affix their names and seals thereto.

(4) A decision under the provisions of paragraphs (1) and (2) is to take effect by serving a copy of the written decision on the addressee thereof.

(5) In a case under paragraphs (1) and (2), the Fair Trade Commission must refund in money any amount already paid pursuant to the pre-modification or pre-rescission Payment Order (excluding delinquency charges as provided in Article 69, paragraph (2)), if there is some portion that should be refunded.

Article 64 (1) An order issued pursuant to the provisions of Article 8-4, paragraph (1) (hereinafter referred to as a "Competition Restoration Order") must be rendered in writing, and the written Competition Restoration Order is to indicate the measures necessary to restore competition with respect to the goods or services involved in the monopolistic situation, and the facts found by the Fair Trade Commission and the application of laws and regulations thereto, and the chairman and commissioners who attended the meeting pursuant to the provisions of paragraph (1) of the following Article must affix their names and seals thereto.

(2) A Competition Restoration Order is to take effect by serving a copy of the written Competition Restoration Order to the addressee thereof.

(3) No Competition Restoration Order can be executed until it becomes final and binding.

(4) The provisions of Articles 49 to 60 inclusive apply mutatis mutandis to the Competition Restoration Order.

(5) If the Fair Trade Commission intends to make a notification under provisions of Article 50, paragraph (1), as applied mutatis mutandis pursuant to the preceding paragraph, it must consult with the competent ministers for the business operated by the enterprise concerned and hold a public hearing to obtain the opinions of the public.

Article 65 (1) Cease and Desist Orders, Payment Orders, Competition Restoration Orders, approvals of Article 48-3 (3) and approvals of Article 48-7 (3), and decisions under the provisions of this Section (excluding payment decision pursuant to the provisions of Article 70, paragraph (2)) must be reached in meetings of the chairman and commissioners.

(2) The provisions of Article 34, paragraphs (1), (2), and (4) apply mutatis mutandis to the meetings set forth in the preceding paragraph.

(3) For a Competition Restoration Order three or more people must concur, notwithstanding the provisions of Article 34, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph.

Article 66 Meetings of the Fair Trade Commission are not open to the public.

Article 67 Any public office or public organization concerned may, in order to protect the public interest, provide its opinions to the Fair Trade Commission.

Article 68 (1) After the approval of Article 48-3 (3), the Fair Trade Commission may, if it considers particularly necessary, take the measure, or order its staff members to take the measures pursuant to the provision of Article 47, necessary to ascertain whether either of the items of Article 48-5 (1) applies.

(2) After the approval of Article 48-7 (3), the Fair Trade Commission may, if it considers particularly necessary, take the measure, or order its staff members to take the measures pursuant to the provision of Article 47, necessary to ascertain whether either of the items of Article 48-9 (1) applies.

(3) After issuing a Cease and Desist Order or a Competition Restoration Order becoming final and binding, the Fair Trade Commission may, if it considers

particularly necessary, take the measures, or order its staff members to take the measures pursuant to the provisions of Article 47, necessary to ascertain whether the measures ordered in that order are being taken.

Article 69 (1) If any person fails to pay a surcharge by the time limit for payment, the Fair Trade Commission must demand the payment by serving a written demand designating a time limit for the payment.

(2) The Fair Trade Commission may, when it demanded payment pursuant to the provisions of the preceding paragraph, collect delinquency charges calculated at a rate of fourteen point five percent per annum of the amount of such surcharge for the number of days intervening between the day after the time limit for payment and the day of payment; provided, however, that this does not apply if the delinquency charges involved are less than one thousand yen.

(3) If the amount of delinquency charges, calculated pursuant to the provisions of the preceding paragraph, includes numbers to the right of the hundreds place, the delinquency charges are rounded down to the nearest hundred yen.

(4) If a person upon whom a demand has been served under the provisions of paragraph (1) fails to make the payment by the designated time limit, the Fair Trade Commission may collect the surcharge to the demand and delinquency charges under the provisions of paragraph (2) pursuant to a disposition of the national tax delinquency.

(5) A statutory lien for a payment to be collected pursuant to the preceding paragraph follows national and local taxes in priority, and the period of prescription for payment follows the rules for national tax.

Article 70 (1) If the Fair Trade Commission has ordered payment of a surcharge pursuant to the provisions of Article 7-2, paragraph (1) (including when these are applied mutatis mutandis pursuant to paragraph (2) of the same Article following the deemed replacement of terms), paragraph (4) of the same Article, or Article 20-2 to 20-6 inclusive, in accordance with the provisions of Article 7-2, paragraph (25) (including when these are applied mutatis mutandis pursuant to Article 20-7 following the deemed replacement of terms), if there is some portion that should be refunded (except in the cases provided in Article 63, paragraph (5)), the Fair Trade Commission shall promptly refund in money any amount already paid pursuant to these provisions.

(2) If the Fair Trade Commission refunds the amount set forth in the preceding paragraph, it must add to the relevant amount the amount calculated by multiplying by a rate specified by Cabinet Order, which must not exceed seven point two five percent per annum, of the amount for the number of days in the period between the day after the lapse of one month from the day after the amount was paid and the day on which the decision was made to pay the refund.

(3) The provisions of the proviso to paragraph (2) and paragraph (3) of the

preceding Article apply mutatis mutandis to amounts added pursuant to the provisions of the preceding paragraph.

Article 70-2 (1) When there has been an application for the approval set forth in Article 11, paragraph (1) or (2), the Fair Trade Commission must render a decision to dismiss it if the Fair Trade Commission finds the relevant application to be groundless.

(2) The provisions of Article 45, paragraph (2) apply mutatis mutandis if an application for approval set forth in the preceding paragraph has been filed.

(3) The provisions of Article 63, paragraphs (3) and (4) apply mutatis mutandis to a decision under the provisions of paragraph (1).

Article 70-3 (1) When the Fair Trade Commission has granted the approval set forth in Article 11, paragraph (1) or (2), if the Fair Trade Commission finds that the facts required for the approval have ceased to exist or have changed, it may rescind or modify the approval by a decision.

(2) The provisions of Articles 49 to 60 inclusive and, Article 63, paragraphs (3) and (4) apply mutatis mutandis to a decision under the provisions of the preceding paragraph.

(2) If the Fair Trade Commission finds that maintenance of a Cease and Desist Order or a Competition Restoration Order is inappropriate due to changes in economic conditions or other reasons, it may rescind or modify the Cease and Desist Order by a decision; provided, however, that this does not apply if such action harms the interests of the addressee of the Cease and Desist Order or the Competition Restoration Order.

(4) The provisions of Article 63, paragraphs (3) and (4) apply mutatis mutandis to a decision under the provisions of the preceding paragraph.

Article 70-4 (1) Upon petition by the Fair Trade Commission, if the court finds there to be an urgent necessity of doing so, the court may order the person engaging in an act suspected of violating the provisions of Article 3; Article 6; Article 8; Article 9, paragraph (1) or (2); Article 10, paragraph (1); Article 11 paragraph (1); , Article 13; Article 14; Article 15, paragraph (1); Article 15-2, paragraph (1); Article 15-3, paragraph (1); Article 16, paragraph (1); Article 17; or Article 19 to temporarily stop engaging in the act, stop exercising voting rights, or stop executing business as an officer of a company, or may rescind or modify such order.

(2) The judicial decision under the provisions of the preceding paragraph is made pursuant to the Non-Contentious Case Procedures Act (Act No. 51 of 2011).

Article 70-5 (1) The execution of a judicial decision under the provisions of paragraph (1) of the preceding Article may be stayed by depositing such security deposits or securities (including book-entry transfer bonds, etc., provided in Article 278, paragraph (1) of the Act on Book-Entry Transfer of Company Bonds, Shares, etc.; the same applies in the following paragraph) as

the court may fix.

- (2) If a deposit has been made pursuant to the provisions of the preceding paragraph and the judicial decision pursuant to the preceding Article, paragraph (1) has become final and binding, the court may, upon the petition of the Fair Trade Commission, impose a non-penal confiscation of the whole or a part of the security deposits or securities deposited.
- (3) The provisions of the preceding Article, paragraph (2) apply mutatis mutandis to the judicial decision pursuant to the preceding two paragraphs.

Article 70-6 Documents to be served are fixed by the Rules of the Fair Trade Commission, in addition to what is provided by this Act.

Article 70-7 With regard to the service of documents, the provisions of Article 99, Article 101, Article 103, Article 105, Article 106, Article 108 and Article 109 of the Code of Civil Procedure (Act No. 109 of 1996) apply mutatis mutandis. In this case, the term "court execution officer" in Article 99, paragraph (1) of the Code is deemed to be replaced with "staff members of the Fair Trade Commission", and the term "presiding judge" in Article 108 of the same Code and the term "court" in Article 109 of the same Code is deemed to be replaced with "the Fair Trade Commission".

Article 70-8 (1) The Fair Trade Commission may make service by publication in the following cases:

- (i) if the domicile, residence or other place where the would-be service recipient should be served is unknown
  - (ii) for service that should be made in a foreign country, if the provisions of Article 108 of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding Article following the deemed replacement of terms cannot be applied, or if it is recognized that service cannot be made based on the provisions
  - (iii) if, after the lapse of six months from the date on which a competent foreign government agency was commissioned to make service pursuant to the provisions of Article 108 of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding Article following the deemed replacement of terms, documents certifying that service was made are not received.
- (2) Service by publication is made by posting on the notice board of the Fair Trade Commission to the effect that the documents to be served will be delivered at any time to the person who is to be served.
  - (3) Service by publication takes effect after two weeks from the date on which the posting under the provisions of the preceding paragraph began.
  - (4) Regarding service by publication in lieu of service to be made in a foreign country, the time period set forth in the preceding paragraph is six weeks.

Article 70-9 (1) Notice of a disposition, etc. pursuant to Article 2, item (vii) of the Act on Use of Information and Communications Technology in Administrative

Procedure (Act No. 151 of 2002), that is to be effected by the service of documents pursuant to the provisions of this Act or the Rules of the Fair Trade Commission, may not be effected using an electronic data processing system ("electronic data processing system" as provided in Article 4, paragraph (1) of the Act on Use of Information and Communications Technology in Administrative Procedure; hereinafter the same applies in this Article) if the recipient of the notice of the disposition, etc. has not indicated via the method specified in the Rules of the Fair Trade Commission that it will be served, notwithstanding the provisions of the same paragraph.

(2) Whenever a staff member of the Fair Trade Commission engages in administrative affairs related to notice of a disposition, etc. as provided in the preceding paragraph using an electronic data processing system, the staff member must record matters related to the service under the provisions of Article 109 of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 70-7 following the deemed replacement of terms in a file stored in a computer (including input and output devices) used by the Fair Trade Commission via an electronic data processing system instead of preparing and submitting a document that states those matters.

Article 70-10 In addition to what is provided for in this Act, necessary matters with respect to Fair Trade Commission investigation and any other matters relating to the processing of cases, as well as those with respect to deposits set forth in Article 70-5, paragraph (1) are provided by Cabinet Order.

Article 70-11 The provisions of Chapters II and III of the Administrative Procedure Act (Act No. 88 of 1993) does not apply to Cease and Desist Orders, Payment Orders, Competition Restoration Orders and measures connected with applications for approval provided in Article 70-2, paragraph (1), and approvals, decisions and any other measures under the provisions of this Section (including measures effected by investigators under the provisions of Article 47, paragraph (2) or by a Designated Staff Member under the provisions of this Section) that have been rendered by the Fair Trade Commission.

Article 70-12 Cease and Desist Orders, Payment Orders and Competition Restoration Orders, and approvals, decisions and any other measures under the provisions of this Section (including measures effected by investigators under the provisions of Article 47, paragraph (2) or by a Designated Staff Member under the provisions of this Section) that have been rendered by the Fair Trade Commission cannot be appealed under the Administrative Appeal Act (Act No. 160 of 1962).

### **Section 3 Miscellaneous Provisions**

Article 71 If the Fair Trade Commission seeks to designate specific trade practices in a specific field of business pursuant to the provisions of Article 2, paragraph (9), item (vi), it is first to hear the opinions of enterprises that are

engaged in the same type of business as the enterprises who employ the relevant specific trade practices and hold a public hearing to obtain the opinions of the public, and then must make the designation after due consideration of the opinions presented.

Article 72 Designation under the provisions of Article 2, paragraph (9), item (vi) is effected by public notice.

Article 73 Deleted.

Article 74 (1) If the Fair Trade Commission is convinced, after an investigation conducted pursuant to the procedures provided in Chapter XII, that a criminal offense has taken place, it must file an accusation with the Prosecutor General.

(2) In addition to what is provided for in the preceding paragraph, if the Fair Trade Commission believes that a crime violating the provisions of this Act has taken place, it must file an accusation with the Prosecutor General.

(3) If the Prosecutor General has decided not to prosecute a case that is the subject of an accusation under the provisions of the preceding two paragraphs, the Prosecutor General must promptly submit a written report to that effect to the Prime Minister through the Minister of Justice, giving the reasons therefor.

Article 75 Witnesses or expert witnesses who have been ordered to appear or to give expert opinions pursuant to the provisions of Article 47, paragraph (1), items (i) or (ii); Article 47, paragraph (2); may claim travel expenses and allowances set forth by Cabinet Order.

Article 76 (1) The Fair Trade Commission may establish rules with respect to its internal disciplines, proceedings of cases and necessary procedures for notifications, applications for approval, and other matters.

(2) In proving rules with respect to the proceedings of cases pursuant to the provisions of the preceding paragraph, the Fair Trade Commission must keep in mind the need to ensure that the relevant proceedings are duly undertaken, including ensuring that the would-be addressee of the Cease and Desist Order, the Payment Order, the Competition Restoration Order, **approvals of Article 48-3 (3) and approvals of Article 48-7 (3)**, and the decision pursuant to the provisions of the preceding Section (hereinafter referred to as a "Cease and Desist Order, etc.") has sufficient opportunity to state and prove the respondent's claims, etc.

### **Chapter IX Legal Actions**

Article 77 The Fair Trade Commission is the defendant in the action for the judicial review of an administrative disposition provided for in Article 3, paragraph (1) of the Administrative Case Litigation Act (Act No. 139 of 1962) in connection with a Cease and Desist Order, etc.

Article 78 (1) If an action to suspend or prevent an infringement pursuant to the provisions of Article 24 has been filed, the court must issue a ruling ordering the plaintiff to provide adequate security, at the petition of the defendant.



(2) In order to file the petition set forth in the preceding paragraph, the fact that the action set forth in the same paragraph has been filed for a wrongful purpose (meaning for the purpose of acquiring a wrongful benefit, for the purpose of harming another person, or for any other wrongful purpose) must be shown by prima facie evidence.

Article 79 (1) When an action to suspend or prevent an infringement under the provisions of Article 24 has been filed, the court is to notify the Fair Trade Commission to that effect.

(2) When an action set forth in the preceding paragraph has been filed, the court may ask for the opinion of the Fair Trade Commission with respect to the application of this Act in the case concerned or with respect to other necessary matters.

(3) When an action set forth in paragraph (1) has been filed, the Fair Trade Commission may, with the permission of the court, state an opinion to the court on the application of this Act in the case concerned or with respect to other necessary matters.

Article 80 (1) In an action to suspend or prevent an infringement under the provisions of Article 24, the court may, upon petition of a party, order a party to produce any documents necessary to prove the alleged infringement; provided, however, this does not apply if the holder of the documents has justifiable grounds for refusing to produce them.

(2) If the court finds it to be necessary in order to ascertain the existence of a justifiable reason prescribed in the proviso to the preceding paragraph, it may require the holder of the documents to produce the documents. In such a case, no person may request disclosure of the produced documents.

(3) In a case under the preceding paragraph, if the court finds it necessary to disclose the documents prescribed in the second sentence of the preceding paragraph, and to hear the opinions of a party, etc. (meaning a party (or for a juridical person, meaning its representative), an agent (excluding counsel or an assistant), an employee, or other worker of a party; the same applies in paragraph (1) of the following Article), it may disclose the relevant documents to the party, etc. , counsel or an assistant.

(4) The provisions of the preceding three paragraphs apply mutatis mutandis to the production of objects for inspection necessary to prove the alleged acts of infringement in an action to suspend or prevent an infringement under the provisions of Article 24.

Article 81 (1) In an action to suspend or prevent an infringement under the provisions of Article 24, if a prima facie showing of both of the following grounds has been made with regard to a trade secret (meaning a trade secret as provided in Article 2, paragraph (6) of Unfair Competition Prevention Act (Act No. 47 of 1993); the same applies hereinafter) held by a party to the

action, the court may order the parties, etc. , counsel, or an assistant not to use the trade secret for any purpose other than pursuing the action, and not to disclose the trade secret to anyone other than a person subject to the order prescribed in this paragraph; provided, however, that this does not apply if the party, etc. , counsel, or the assistant had already acquired or held the trade secret by means other than reading the brief prescribed in item (i) or through the examination or disclosure of evidence prescribed in the same item:

- (i) the trade secret held by the party, is written in an already-produced or to-be-produced brief, or included in the contents of already-examined or to-be-examined evidence (including documents disclosed pursuant to the provisions of the paragraph (3) of the preceding Article)
  - (ii) the party's business activities based on the trade secret under the preceding item are likely to be hindered by the use of the relevant trade secret for purpose other than pursuing the action or its disclosure, and it is necessary to restrict the use or disclosure of the trade secret in order to prevent this.
- (2) A petition for the order prescribed in the preceding paragraph (hereinafter referred to as the "Protective Order") must be in writing and include the following matters:
- (i) a person to whom the Protective Order to be issued.
  - (ii) facts that are sufficient for identifying the trade secret to be the subject to the Protective Order
  - (iii) facts that fall under the grounds listed in each of the items of the preceding paragraph
- (3) Whenever the court issues a Protective Order, it must serve a written decision on the person to whom the Protective Order was issued.
- (4) A Protective Order takes effect when a written decision is served on the person to whom the Protective Order was issued.
- (5) If the court dismisses a petition for a Protective Order, the party may lodge an immediate appeal against the decision.

- Article 82 (1) A petitioner for a Protective Order or a person to whom a Protective Order was issued may file a petition for rescission of the Protective Order with the court that retains the case record (if no such court exists, the court that issued the Protective Order) on the grounds that the requirement prescribed in the preceding Article have not been met or are no longer met.
- (2) Whenever the court makes a decision on a petition for rescission of a Protective Order, it must serve a written decision on the petitioner and the adverse party.
- (3) An immediate appeal may be lodged against a decision on the petition for rescission of a Protective Order.

- (4) A decision to rescind a Protective Order must not take effect until the decision becomes final and binding.
- (5) When a court has rendered a decision to dismiss a Protective Order, if the court had issued a Protective Order for the protection of the trade secret against any person other than the petitioner for rescission of the Protective Order or the adverse party during the same action in which the Protective Order was issued, the court must immediately notify the person of its decision to rescind the Protective Order.

Article 83 (1) When a court has issued a ruling under Article 92, paragraph (1) of the Code of Civil Procedure with regard to the case record for an action in which a Protective Order has been issued (excluding an action in which all the Protective Orders have been rescinded), if a party requests to conduct an inspection, etc. of the portion of the record that includes the secret provided for in the same paragraph, and the person who make the request was not subject to a Protective Order in the action, the court clerk must, immediately after the request is made, notify the party that filed the petition under the same paragraph (excluding the requestor; the same applies in paragraph (3)) of the fact that such a request was made.

- (2) In a case under the preceding paragraph, the court must not allow the party who performed the procedure for the request under the same paragraph to conduct an inspection, etc. of the portion of the record that represents the secret until two weeks have passed since the date of the request (if a petition for a Protective Order against the person who performed the procedure for the request was filed on or before such date, until the date on which the decision on the petition becomes final and binding).
- (3) The provisions of the preceding two paragraphs are not to apply if all parties who filed a petition under Article 92, paragraph (1) of the Code of Civil Procedure consent to allow the party who made the request under paragraph (1) to conduct an inspection, etc. of the portion of the record that represents the secret.

Article 84 (1) Whenever an action for damages under the provisions of Article 25 has been filed, the court may ask for the opinion of the Fair Trade Commission with respect to the amount of damages caused by such violations as provided in the same Article.

- (2) If a claim for damages under the provisions of Article 25 is made in court proceedings for the purpose of a set-off, the provisions of the preceding paragraph apply *mutatis mutandis*.

Article 84-2 (1) When a court listed in one of the following items has jurisdiction over an action to suspend or prevent an infringement under the provisions of Article 24 pursuant to the provisions of Articles 4 and 5 of the Code of Civil Procedure, the action may also be filed with the court set forth

in the relevant item:

- (i) a district court located within the jurisdiction of the Tokyo High Court (excluding Tokyo District Court), Osaka District Court, Nagoya District Court, Hiroshima District Court, Fukuoka District Court, Sendai District Court, Sapporo District Court or Takamatsu District Court: Tokyo District Court
  - (ii) a district court located within the jurisdiction of the Osaka High Court (excluding Osaka District Court): Tokyo District Court or Osaka District Court
  - (iii) a district court located within the jurisdiction of the Nagoya High Court (excluding Nagoya District Court): Tokyo District Court or Nagoya District Court
  - (iv) a district court located within the jurisdiction of the Hiroshima High Court (excluding Hiroshima District Court): Tokyo District Court or Hiroshima District Court
  - (v) a district court located within the jurisdiction of the Fukuoka High Court (excluding Fukuoka District Court): Tokyo District Court or Fukuoka District Court
  - (vi) a district court located within the jurisdiction of the Sendai High Court (excluding Sendai District Court): Tokyo District Court or Sendai District Court
  - (vii) a district court located within the jurisdiction of the Sapporo High Court (excluding Sapporo District Court): Tokyo District Court or Sapporo District Court
  - (viii) a district court located within the jurisdiction of the Takamatsu High Court (excluding the Takamatsu District Court): Tokyo District Court or Takamatsu District Court
- (2) With respect to the application of the provisions of Article 7 of the Code of Civil Procedure to a case in which several claims are made in one action, including a claim under the provisions of Article 24 of this Act, the term "Article 4 to the preceding Article inclusive (excluding Article 6, paragraph (3))" in Article 7 of the Code of Civil Procedure is deemed to be replaced with "Article 4 to the preceding Article inclusive (excluding Article 6, paragraph (3)), and Article 84-2, paragraph (1) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade."
- Article 84-3 The jurisdiction of the first instance over any action involving a crime provided for in Articles 89 to 91 inclusive are to lie in the district courts.
- Article 84-4 If a court listed in one of the items under Article 84-2, paragraph (1) has jurisdiction over a case connected with crimes provided in the preceding Article pursuant to the provisions of Article 2 of the Code of Criminal

Procedure (Act No. 131 of 1948), the court prescribed in the relevant item also has jurisdiction over the case.

Article 85 Any following action and case is subject to the exclusive jurisdiction of the Tokyo District Court:

- (i) action for the judicial review of an administrative disposition under Article 3, paragraph (1) of the Administrative Case Litigation Act in connection with the Cease and Desist Order, etc.
- (ii) any case provided for in Article 70-4, paragraph (1), Article 70-5, paragraphs (1) and (2), Article 97 and Article 98.

Article 85-2 The jurisdiction of the first instance over any actions concerning compensation for damages pursuant to the provisions of Article 25 is to lie with the Tokyo District Court.

Article 86 (1) The Tokyo District Court is to conduct a proceeding and make a judicial decision by a panel consisting of three judges for action and case provided for in Article 85, as well as actions provided for in the preceding Article.

(2) Notwithstanding the provisions of the preceding paragraph, the Tokyo District Court, with regard to the action and case preceding paragraph, may make a ruling by the panel of five judges who are to conduct a proceeding and make a judicial decision.

(3) In the case of the preceding paragraph, the panel may not contain three or more assistant judges simultaneously, and no assistant judge may serve as the presiding judge.

Article 87 With regard to the case subject to appeal to the Tokyo High Court against a final judgment made by the Tokyo District Court for the action or suit set forth in Article 85, item (i) or the action or suit pursuant to Article 85-2 or the case subject to appeal to the Tokyo High Court against a ruling made by the Tokyo District Court for the case as set forth in Article 85, item (ii), in the Tokyo High Court, a panel may make a ruling that the panel of five judges is to conduct a proceeding and make a judicial decision on that case.

Article 87-2 If an action to suspend or prevent an infringement pursuant to the provisions of Article 24 has been filed, and an action pursuant to the same Article in connection with the same or similar acts are pending before another court, when the court finds it proper in consideration of the addresses or locations of the parties, addresses of witnesses to be examined, the commonality of issues or evidence, and any other circumstances, the court may transfer, the case in whole or in part to the relevant other court or other courts having jurisdiction over the relevant action, by the court's own authority pursuant to the provisions of Article 84-2, paragraph (1).

Article 88 With respect to action for the judicial review of an administrative disposition under Article 3, paragraph (1) of the Administrative Case Litigation Act in connection with the Cease and Desist Order, etc., the provisions of Article 6 of the Act on the Authority of the Minister of Justice over Suits Affecting the Interests of State (Act No. 194 of 1947) do not apply.

## **Chapter X Miscellaneous Provisions**

Article 88-2 If any Cabinet Order or Rules of the Fair Trade Commission are established, revised or abolished pursuant to the provisions of this Act, necessary transitional measures (including transitional measures relating to penal provisions) may be provided by virtue of the Cabinet Order or the Rules of the Fair Trade Commission to the extent they are considered reasonably necessary along with such establishment, revision or abolition.

#### **Chapter XI Penal Provisions**

Article 89 (1) A person who falls under any of the following items are punished by imprisonment with work for not more than five years or by a fine of not more than five million yen:

- (i) a person who, in violation of the provisions of Article 3, has effected private monopolization or unreasonable restraint of trade
- (ii) a person who, in violation of the provisions of Article 8, item (i), has effected substantial restraint of competition in any particular field of trade

(2) An attempt to commit a crime falling under the preceding paragraph will be punished.

Article 90 A person who falls under any of the following items is punished by imprisonment with work for not more than two years or by a fine of not more than three million yen:

- (i) a person who, in violation of the provisions of Article 6 or Article 8, item (ii) has entered into an international agreement, or an international contract which contains such matters which fall under unreasonable restraint of trade
- (ii) a person who violated the provisions of Article 8, item (iii) or (iv)
- (iii) a person who fails to comply with a Cease and Desist Order or a Competition Restoration Order after it has become final and binding

Article 91 A person who has acquired or held shares in violation of the provisions of Article 11, paragraph (1), who has held shares in violation of provisions of paragraph (2) of the same Article, or who has violated, regarding the prohibition or restriction pursuant to these provisions, the provisions of Article 17, is punished by imprisonment with work for not more than one year or by a fine of not more than two million yen.

Article 91-2 A person who falls under any of the following items is punished by a fine of not more than two million yen:

- (i) a person who, in violation of the provisions of Article 9, paragraph (4), has failed to submit a written report or submitted a written report with a false description
- (ii) a person who, in violation of the provisions of Article 9, paragraph (7), has failed to notify or submitted a written notification with a false description
- (iii) a person who, in violation of the provisions of Article 10, paragraph (2), has failed to notify or submitted a written notification with a false description

- (iv) a person who has acquired shares in violation of the provisions of Article 10, paragraph (8)
- (v) a person who, in violation of the provisions of Article 15, paragraph (2) has failed to notify or submitted a written notification with a false description
- (vi) a person who, in violation of the provisions of Article 10, paragraph (8) as applied mutatis mutandis pursuant to Article 15, paragraph (3) following the deemed replacement of terms, has effected a register of an incorporation or a change as a result of a merger
- (vii) a person who, in violation of the provisions of Article 15-2, paragraphs (2) and (3) has failed to notify or submitted a written notification with a false description
- (viii) a person who, in violation of the provisions of Article 10, paragraph (8) as applied mutatis mutandis pursuant to Article 15-2, paragraph (4) following the deemed replacement of terms, has effected a register of incorporation as a result of a joint incorporation-type company split or a register of change as a result of an absorption-type split
- (ix) a person who, in violation of the provisions of Article 15-3, paragraph (2), has failed to give notification or submitted a written notification with a false description
- (x) a person who has effected a register of incorporation as a result of a joint share transfer in violation of the provisions of Article 10, paragraph (8) as applied mutatis mutandis pursuant to Article 15-3, paragraph (3) following the deemed replacement of terms
- (xi) a person who, in violation of the provisions of Article 16, paragraph (2), has failed to give notification or submitted a written notification with a false description
- (xii) any person who, in violation of the provisions of Article 10, paragraph (8) as applied mutatis mutandis pursuant to Article 16, paragraph (3) following the deemed replacement of terms, has carried out an act falling under Article 16, paragraph (1), item (i) or (ii)
- (xiii) a person who, in violation of the provisions of Article 23, paragraph (6), has failed to notify or has submitted a written notification with a false description

Article 92 A person who has committed any of the crimes provided in Articles 89 to 91 inclusive may be punished by cumulative imposition of both imprisonment with work and a fine, in accordance with the circumstances.

Article 93 A person who violates the provisions of Article 39 is punished by imprisonment with work for not more than one year or by a fine of not more than one million yen.

Article 94 A person who falls under any of the following items is punished by imprisonment with work for not more than one year or by a fine of not more

than three million yen:

- (i) a person concerned with a case or any witness who, in violation of the measures taken against them, pursuant to the provisions of Article 47, paragraph (1), item (i) or paragraph (2), has failed to appear or to make a statement, or has made a false statement, or failed to submit a report, or submitted a false report
- (ii) an expert witness who, in violation of the measures taken with regard to them, pursuant to the provisions of Article 47, paragraph (1), item (ii) or paragraph (2), has failed to appear or to give an expert opinion, or submitted a false expert opinion
- (iii) a holder of the materials who, in violation of the objects taken with regard to them pursuant to the provisions of Article 47, paragraph (1), item (iii) or paragraph (2), has failed to submit the objects
- (iv) a person who has refused, obstructed or evaded the inspection pursuant to the provisions of Article 47, paragraph (1), item (iv) or paragraph (2)

Article 94-2 A person who, in violation of the measures pursuant to the provisions of Article 40, has failed to appear or to submit a report, information or materials, or submitted a false report, information or materials is punished by a fine of not more than two hundred thousand yen.

Article 94-3 (1) A person who violates a Protective Order is punished by imprisonment with work for not more than five years or by a fine of not more than five million yen, or both.

(2) The offence prescribed in the preceding paragraph may not be persecuted without a complaint.

(3) The offence prescribed in paragraph (1) also applies to a person who committed it outside Japan.

Article 95 (1) If a representative of a juridical person, or an agent, an employee or any other worker of a juridical person or of an individual has, with regard to the business or property of the juridical person or individual, violated the provisions referred to in any of the following items, in addition to the offender being punished, the juridical person or individual is sentenced to the fine prescribed in each of those items.

(i) Article 89: Fine of not more than five hundred million yen.

(ii) Article 90, item (iii) (excluding violation of an order pursuant to the provisions of Article 7, paragraph (1); or Article 8-2, paragraphs (1) or (3) (limited to portions ordering the party to cease and desist from the act in violation of the provisions of Article 3 or Article 8, item (i))): Fine of not more than three hundred million yen.

(iii) Article 90, item (i), (ii), or (iii) (limited to violation of an order pursuant to the provisions of Article 7, paragraph (1) or Article 8-2, paragraphs (1) or (3) (limited to portions ordering the party to cease and desist from the act in



- violation of the provisions of Article 3 or Article 8, item (i)), Article 91, Article 91-2 or Article 94: Fine as provided in each of the Articles.
- (2) If a representative, manager, agent, employee or any other worker of an organization without juridical personality has, with regard to the business or property of the organization, violated the provisions referred to in any of the following items, in addition to the offender being punished, the organization is sentenced to the fine prescribed in each of those items.
- (i) Article 89: Fine of not more than five hundred million yen
- (ii) Article 90, item (iii) (excluding violation of an order pursuant to the provisions of Article 7, paragraph (1) or Article 8-2, paragraphs (1) or (3) (limited to portions ordering the party to cease and desist from the act in violation of the provisions of Article 3 or Article 8, item (i))): Fine of not more than three hundred million yen
- (iii) Article 90, item (i), (ii), or (iii) (limited to violation of an order pursuant to the provisions of Article 7, paragraph (1) or Article 8-2, paragraphs (1) or (3) (limited to portions ordering the party to cease and desist from the act in violation of the provisions of Article 3 or Article 8, item (i))), or Article 94: Fine as provided in each of the Articles
- (3) If a representative of a juridical person, or an agent, employee or any other of a juridical person or an individual has violated paragraph (1) of the preceding Article, in addition to the offender being punished, the juridical person is sentenced to a fine of not more than three hundred million yen, or the individual is sentenced to the fine prescribed in the same paragraph.
- (4) The period of prescription of a penalty sentenced to a fine, to be imposed on a juridical person, an individual or organization pursuant to the provisions of paragraphs (1) or (2) in regard to a violation of Article 89 is the same as those for the offenses prescribed in the same Article.
- (5) In a case under paragraph (2), the representative or manager represents the organization in procedural acts, and the provisions of the Code of Criminal Procedure that are applicable to procedural acts if a juridical person is the accused or the suspect apply *mutatis mutandis*.
- (6) The period of prescription for a sentence to a fine imposed upon a juridical person or an individual pursuant to the provisions of paragraph (3) in regard to a violation of paragraph (1) of the preceding Article is the same as for the offences prescribed in the same paragraph.
- Article 95-2 If a violation of Article 89, paragraph (1), item (i); Article 90, item (i) or (iii); or Article 91 occurs, the representative of the relevant juridical person (excluding those that fall under the category of a trade association for a violation of Article 90, items (i) or (iii)) that has failed to take necessary measures to prevent the violation despite the knowledge of a plan for the violation or that has failed to take necessary measures to rectify the violation

despite the knowledge of the violation, is also to be punished by the fine as prescribed in the relevant Article.

Article 95-3 (1) If a violation of Article 89, paragraph (1), item (ii) or Article 90 occurs, an officer or any other officer or a manager of the relevant trade association or its constituent enterprise (including, if the officer, employee, agent or other person who has engaged in the act for the benefit of an enterprise was a constituent enterprise, the relevant enterprise) that has failed to take necessary measures to prevent the violation despite the knowledge of a plan for the violation or who has failed to take necessary measures to rectify the violation despite knowledge of the violation, is also to be punished by the fine as prescribed in each of the Articles.

(2) If an officer or any other officer or a manager of the relevant trade association or its constituent enterprise as provided in the preceding paragraph is a juridical person or any other organization, the provisions of the preceding paragraph apply to the officer or other officer or manager of the organization.

Article 95-4 (1) If the court finds that sufficient grounds exist, it may sentence a trade association to dissolution, simultaneously with the rendition of punishments as provided in Article 89 or Article 90, paragraph (1), item (ii).

(2) If a trade association has been sentenced to dissolution pursuant to the provisions of the preceding paragraph, the trade association is dissolved by virtue of the sentence, notwithstanding the provisions of any other laws or regulations, articles of incorporation or other stipulations.

Article 96 (1) A crime under Articles 89 to 91 inclusive is considered only after an accusation is filed by the Fair Trade Commission.

(2) The accusation set forth in the preceding paragraph is made in writing.

(3) In filing an accusation under paragraph (1), whenever the Fair Trade Commission finds it to be appropriate for the sentence under paragraph (1) of the preceding Article or Article 100, paragraph (1), item (i) to be rendered with respect to a crime related to the accusation, the Fair Trade Commission may state to that effect in the written accusation set forth under the preceding paragraph.

(4) The accusation under paragraph (1) cannot be revoked after institution of prosecution.

Article 97 Any person who has violated a Cease and Desist Order is subject to a non-criminal fine of not more than five hundred thousand yen; provided, however, that the foregoing does not apply if the relevant act is to be punished.

Article 98 Any person who has violated a judicial decision under the provisions of Article 70-4, paragraph (1) is punished by a non-criminal fine of not more than three hundred thousand yen.

Article 99 Deleted.

Article 100 (1) In a case under Article 89 or 90, the court may issue the following

sentences simultaneously with the rendition of punishments, depending on the circumstances; provided, however, that the sentence under item (i) is limited to a case in which the relevant patent right, or exclusive or non-exclusive license for a patented invention belongs to the criminal:

- (i) that the patent under patent right or the exclusive or non-exclusive license for the patented invention which was used for the violation related is revoked
  - (ii) that the criminal may not enter into a contract with the government for a period of not less than six months and not more than three years after the judgment becoming final and binding
- (2) When a judgment with a sentence as provided in item (i) of the preceding paragraph becomes final and binding, the court must send a copy thereof to the Commissioner of the Patent Office.
- (3) The Commissioner of the Patent Office must, upon receipt of the copy of the judgment under the provisions of the preceding paragraph, revoke the patent under the patent right, or the exclusive or non-exclusive license for the patented invention.

#### **Chapter XII Investigation of Criminal Cases, Etc.**

Article 101 (1) Whenever necessary in the investigation of a criminal case (cases related to crimes in Articles 89 to 91 inclusive; hereinafter the same applies in this Chapter), a staff member of the Fair Trade Commission (limited to the staff members designated by the Fair Trade Commission; hereinafter referred to in this Chapter as "FTC Staff Member(s)") may request a criminal suspect or witness (hereinafter referred to in this paragraph as "Criminal Suspect(s), etc.") to appear before the Fair Trade Commission, may question a Criminal Suspect, etc. , inspect an object possessed or abandoned by a Criminal Suspect, etc. , and may retain an object voluntarily submitted or abandoned by a Criminal Suspect, etc.

- (2) In the course of an investigation in a criminal case, an FTC Staff Member may inquire with a public agency or public or private organization and request that the agency or organization report the necessary matters.

Article 102 (1) Whenever necessary in the investigation of a criminal case, an FTC Staff Member may conduct an on-site inspection, search, or seizure, by virtue of a Warrant issued in advance by a judge of the district court or summary court having jurisdiction over the location of the Fair Trade Commission (Note: Tokyo District Court and Tokyo Summary Court).

- (2) In a case under the preceding paragraph requiring urgency, an FTC Staff Member may take the measures under the preceding paragraph by virtue of a warrant issued in advance by a judge of the district court or the summary court having jurisdiction over the location of the site to be inspected, the site, body or an object to be searched, or the object to be seized.

- (3) When an FTC Staff Member requests a warrant provided for in paragraph (1) or the preceding paragraph (hereinafter referred to in this Chapter as a "Warrant"), the FTC Staff Member must submit materials that confirm the existence of a criminal case.
- (4) If a request provided in the preceding paragraph is made, the judge of the district court or the summary court must issue a Warrant to the FTC Staff Member with the judge's name and seal affixed thereto, and the following information entered thereon: the site to be inspected; the site, body or object to be searched; or the object to be seized; the government position and name of the person making the request; the Warrant's valid period; the fact that the inspection, search or seizure may not be initiated and the Warrant must be returned after the expiration of the valid period; the date of issuance of the Warrant; and the name of the court to which the judge belongs. In this case, the name of the criminal suspect and the fact of a criminal offense, if known, must also be written.
- (5) An FTC Staff Member may deliver a Warrant to another FTC Staff Member and have that FTC Staff Member conduct the on-site inspection, search or seizure.

Article 103 (1) Whenever necessary in the investigation of a criminal case, after receipt of a Warrant, an FTC Staff Member may seize postal items, correspondence or documents related to telegrams that are sent by or to a criminal suspect and stored or possessed by persons handling communication affairs pursuant to the provisions of laws and regulations.

- (2) After receipt of a Warrant, an FTC Staff Member may seize postal items, correspondence or documents related to telegrams that are stored or possessed by persons handling communication affairs pursuant to the provisions of laws and regulations and do not fall under the provisions of the preceding paragraph, to the extent that there are sufficient grounds to suspect each of the items are related to a criminal case.
- (3) If the measures under the preceding two paragraphs have been taken, FTC Staff Members must notify the sender or recipient of the items to that effect; provided, however, that this does not apply if notifying the sender or recipient is likely to hinder the investigation of the criminal case.

Article 104 (1) No on-site inspection, search or seizure may be conducted during the period from sunset to sunrise unless it is specified on the Warrant that the Warrant may be executed at night.

- (2) If it is considered to be necessary, an on-site inspection, search or seizure that was initiated before sunset may be continued beyond sunset.

Article 105 Warrants for on-site inspection, search or seizure must be shown to the person that is subject to such measures.

Article 106 When conducting questioning, inspection, retention, on-site

inspection, search or seizure pursuant to the provisions of this Chapter, an FTC Staff Member must carry an identification card that indicates their official status and produce it at the request of persons concerned.

Article 107 (1) Whenever necessary for conducting an on-site inspection, search, or seizure, an FTC Staff Member may open locks, open seals and take other necessary measures.

(2) The measures set forth in the preceding paragraph may be taken in relation to objects retained or seized.

Article 108 FTC Staff Members may prohibit any person from entering or leaving the site without permission while the questioning, inspection, retention, on-site inspection, search or seizure pursuant to the provisions of this Chapter are being conducted.

Article 109 (1) When conducting an on-site inspection, search or seizure of a person's residence, or a residence, building or other site guarded by a person, an FTC Staff Member must have the owner or superintendent (including their representative or agent or other person who can act on their behalf), or their employee or cohabitating relative who has attained the age of majority witness it.

(2) If it is not possible, in a case under the preceding paragraph, to have a person provided in that paragraph witness the on-site inspection, search, or seizure, an FTC Staff Member must have a neighbor who has attained the age of majority or a local police official or local government official witness it.

(3) Any body-search of a female must be conducted in the presence of a female witness over the age of majority; provided, however, that this does not apply to urgent cases.

Article 110 If necessary in the course of an on-site inspection, search or seizure, an FTC Staff Member may request the assistance of police officials.

Article 111 After carrying out questioning, inspection, retention, on-site inspection, search or seizure pursuant to the provisions of this Chapter, an FTC Staff Member must prepare a written report that states the date when the measures were taken and the findings, and show it to the person who was questioned or the witness, and, along with the person who was questioned or the witness, affix the person's name and seal thereto; provided, however, that if the person who was questioned or the witness does not affix the person's name and seal thereto or is unable to do so, it is sufficient to make supplementary note to that effect.

Article 112 After carrying out retention or seizure, an FTC Staff Member must prepare an inventory of the objects retained or seized and deliver a copy of the inventory to the owner or holder of the objects retained or seized or a person who can act in lieu of the owner or holder.

Article 113 Regarding a retained or seized object that is difficult to transport or

store, an FTC Staff Member may, with the consent of the owner or holder of the object or other person that the FTC Staff Member finds to be appropriate, have such a person store the object after receiving a safekeeping receipt.

Article 114 (1) After a retained or seized object no longer needs to be held in custody, the Fair Trade Commission must return the object to the person to whom it should be returned.

(2) If the Fair Trade Commission cannot return a retained or seized object set forth in the preceding paragraph because it does not know the domicile or residence of the person to whom the object should be returned or because of another reason, the Fair Trade Commission must issue a public notice to that effect.

(3) If no request is made for the return of a retained or seized object regarding which a public notice has been issued pursuant to the preceding paragraph after six months have elapsed since the day of the public notice, the object belongs to the national treasury.

Article 115 After completing the investigation of a criminal case, a FTC Staff Member must report the results of the investigation to the Fair Trade Commission.

Article 116 (1) If an accusation is filed pursuant to the provisions of Article 74, paragraph (1) as a result of the investigation of a criminal case, if there are any retained or seized objects, the Fair Trade Commission must hand over the objects together with the inventory thereof.

(2) If a retained or seized object set forth in the preceding paragraph is being stored pursuant to the provisions of Article 113, the Fair Trade Commission must hand over the safekeeping receipt set forth in that Article and notify the person storing the object pursuant to that Article to that effect.

(3) When a retained or seized object is handed over pursuant to the provisions of the preceding two paragraphs, the object is deemed to have been seized pursuant to the provisions of the Code of Criminal Procedure.

Article 117 The provisions of Chapters II to IV inclusive of the Administrative Procedure Act do not apply to measures taken or administrative guidance implemented by the Fair Trade Commission or an FTC Staff Member in accordance with the provisions of this Chapter.

Article 118 Measures taken by the Fair Trade Commission or an FTC Staff Member pursuant to the provisions of this Chapter cannot be appealed under the Administrative Appeal Act.