

Rules on Hearing of Opinions by the Fair Trade Commission

(Tentative translation: only Japanese version is authentic)

Fair Trade Commission Rule No. 1 of 2015

January 21, 2015

Pursuant to the provisions of Article 52, paragraph (1) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947) (including the cases where it is applied mutatis mutandis by replacing certain terms pursuant to Article 62, paragraph (4) of the same Act and where it is applied mutatis mutandis pursuant to Article 64, paragraph (4) and Article 70-3, paragraph (2) of the same Act) and Article 76, paragraph (1) of the same Act, the following Rules on Hearing of Opinions by the Fair Trade Commission are hereby established.

Section 1 (Purpose and Definitions in These Rules)

(1) The procedures for the hearing of opinions conducted by the Fair Trade Commission (hereinafter referred to as the "Commission") shall follow these Rules in addition to the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947) (hereinafter referred to as the "Act"; including the cases where the Act is applied mutatis mutandis pursuant to Article 95-4 of the Fishery Cooperatives Act (Act No. 242 of 1948), and Article 108 of the Small and Medium-Sized Enterprise Cooperatives Act (Act No. 181 of 1949)).

(2) The terms used in these Rules which are the same as those used in the Act shall have the same meanings as those used in the Act.

Section 2 (Calculation of Period)

(1) The calculation of any period of time shall be governed by the provisions related to periods of time in the Civil Code (Act No. 89 of 1896).

(2) If the last day of a period of time falls on any of the days listed in the items of Article 1, paragraph (1) of the Act on Holidays of Administrative Organs (Act No. 91 of 1988), the period of time shall expire on the immediately following day.

Section 3 (Language)

(1) The Japanese language shall be used for the procedures for the hearing of opinions.

(2) When a person not versed in the Japanese language makes a statement, an interpreter shall interpret his/her statement into Japanese.

(3) If an evidence which is submitted pursuant to the provisions of Article 54, paragraph (2) or Article 55 of the Act (including the cases where they are applied mutatis mutandis by replacing certain terms pursuant to Article 62, paragraph (4) of the Act or where they are applied mutatis mutandis pursuant to Article 64, paragraph (4) or Article 70-3, paragraph (2) of the Act) is not prepared in Japanese, the evidence shall be accompanied by the Japanese translation of the portion related to the fact which is to be proved by such evidence.

Section 4 (Method of Official Notice)

The Commission may publish in the official gazette or newspaper the fact that an official notice has been given. With respect to an official notice which is to be given in a foreign country, the Commission may give notice of the fact that the official notice has been given, in lieu of publishing the same in the official gazette or newspaper.

Section 5 (Preparation of Documents)

Any document that is prepared for the procedures for the hearing of opinions shall be dated, and shall have a name and seal affixed.

Section 6 (Correction of Documents)

No character shall be altered in preparing documents for the procedures for the hearing of opinions. If any character is added, deleted, or written in the margin of a page, a seal of approval shall be affixed to it. In this case, any deleted character shall be left visible so that it can be read.

Section 7 (Submission of Documents with Use of Facsimile Machine)

(1) Documents to be submitted in the procedures for the hearing of opinions may be submitted by transmitting the same by using facsimile machine, excluding the following documents:

(i) Written statements and evidence prescribed in Article 55 of the Act (including the cases where it is applied mutatis mutandis by replacing certain terms pursuant to Article 62, paragraph (4) of the Act or where it is applied mutatis mutandis pursuant to Article 64, paragraph (4) or Article 70-3, paragraph (2) of the Act)

(ii) Written materials prescribed in Section 11, paragraphs (1), (2) and other documents proving important matters for the procedures for the hearing of opinions.

(2) Where a document is submitted by using facsimile machine, it shall be deemed to have been submitted to the Commission or the designated staff member at the time that

the Commission receives it.

(3) The Commission or the designated staff member may, when it or he/she finds it necessary in the case prescribed in the preceding paragraph, have the person who has submitted the document by using facsimile machine submit the original of the transmitted document.

Section 8 (Provision of Information by Electromagnetic Means)

If the party concerned has an electromagnetic record (meaning a record made in an electronic form, a magnetic form, or any other form not recognizable to human perception which is used in information processing by computers; hereinafter the same shall apply in this Section) of the information contained in the written materials which has been submitted to or is to be submitted to the designated staff member, the designated staff member may request said party concerned to provide him/her with the information recorded in the electromagnetic record by electromagnetic means (meaning a method using an electronic data processing system or any other method using information and communications technology) specified by the designated staff member where he/she finds it necessary.

Section 9 (Notice of Hearing of Opinions)

The notice pursuant to the provisions of Article 50, paragraph (1) of the Act shall be given to the would-be addressee of the cease and desist order, by serving a document containing the matters listed in the items of the same paragraph and the items of paragraph (2) of the same Article, the title of the case, and the list of the evidence proving the facts found by the Commission with regard to the case for the hearing of opinions.

Section 10 (Change of the Date, etc. of Hearing)

(1) Where the Commission has given notice pursuant to the provisions of Article 50, paragraph (1) of the Act, if the party concerned has any unavoidable reason, he/she may request a change of the date or place of the hearing to the designated staff member in writing.

(2) The request set forth in the preceding paragraph shall be made by submitting a written request stating the reason for such request to the designated staff member.

(3) The designated staff member may change the date or place of the hearing in response to the request set forth in paragraph (1) or by his/her own authority.

(4) The designated staff member shall give written notice to the party concerned promptly if he/she changes the date or place of the hearing pursuant to the provisions of

the preceding paragraph.

(5) The provisions of the preceding four paragraphs shall apply mutatis mutandis to the cases where the designated staff member gives a notice pursuant to the provisions of Article 56, paragraph (2) of the Act (including the cases where it is applied mutatis mutandis pursuant to the provisions of Article 59, paragraph (2) of the Act).

Section 11 (Agents)

(1) The status of agents shall be certified in writing.

(2) When an agent becomes divested of his/her status, the party concerned who appointed that agent shall promptly give written notice thereof to the Commission.

Section 12 (Procedures for Inspection of Evidence)

(1) In order to make a request for inspection pursuant to the provisions of Article 52, paragraph (1) of the Act, the party concerned shall submit a written request in Form No. 1 to the Commission.

(2) The Commission may designate the method with regard to the inspection set forth in Article 52, paragraph (1) of the Act.

(3) Where the Commission designates the date, time and place with regard to inspection pursuant to the provisions of Article 52, paragraph (3) of the Act or designates the method of inspection pursuant to the provisions of the preceding paragraph, the Commission shall promptly give notice to the party concerned to that effect. In this case, the Commission shall exercise care with regard to the date, time, place and method so designated, so as not to prevent the preparation for the statements, etc. by the party concerned (meaning the "statements, etc. by the party" prescribed in Article 56, paragraph (1) of the Act; the same shall apply hereinafter) on the date of the hearing.

(4) The Commission shall give written notice of the list of the evidence set forth in Article 52, paragraph (2) of the Act to the party concerned.

(5) The provisions of paragraphs (1) through (3) shall apply mutatis mutandis to the inspection set forth in Article 52, paragraph (2) of the Act.

(6) When the date and time have been designated for the inspection set forth in Article 52, paragraph (2) of the Act, the designated staff member shall determine a date which is on or after such date and time for inspection as the new date of the hearing pursuant to the provisions of Article 56, paragraph (1) of the Act.

Section 13 (Procedures for Copying of Evidence)

(1) The copy prescribed by the Rules of the Fair Trade Commission as provided for in

Article 52, paragraph (1) of the Act shall be the copy of evidence establishing the facts found by the Commission with regard to the case for the hearing of opinions which falls under any of the following:

(i) Books and documents and other objects submitted where the party concerned or its employee is ordered to submit such articles pursuant to the provisions of Article 47, paragraph (1), item (iii) of the Act, or the books and documents and other objects voluntarily submitted by the party concerned or its employee

(ii) Articles retained where the articles voluntarily submitted or abandoned by the party concerned or its employee is retained pursuant to the provisions of Article 101, paragraph (1) of the Act, and the articles seized from the party concerned or its employee pursuant to the provisions of Article 102, paragraph (1) or (2) of the Act

(iii) Records of interrogation prescribed in Section 11, paragraph (1) of the Rules on Administrative Investigations by the Fair Trade Commission (Fair Trade Commission Rule No. 5 of 2005) where an interrogation of the party concerned or its employee has been made pursuant to the provisions of Article 47, paragraph (1), item (i) of the Act, and records of statement prescribed in Section 13, paragraph (1) of the same Rules where the party concerned or its employee has given a voluntary statement

(iv) Records containing the result of making questions where questions have been made to the party concerned or its employee pursuant to the provisions of Article 101, paragraph (1) of the Act

(2) The provisions of the preceding Section shall apply mutatis mutandis to the copying set forth in Article 52, paragraphs (1) and (2) of the Act.

Section 14 (Procedures for Designating the Staff Member Presiding Over Hearing of Opinions)

(1) The designation of the staff member who presides over the hearing of opinions as prescribed in Article 53, paragraph (1) of the Act shall be made upon or prior to the notice given pursuant to the provisions of Article 50, paragraph (1) of the Act.

(2) If the designated staff member dies or becomes unable to continue the hearing of opinions due to a mental or physical disorder or any other cause, the Commission shall promptly designate a new staff member.

(3) When the Commission intends to issue an order pursuant to the provisions of Article 17-2 of the Act, it may not designate, as the staff member presiding over the hearing of opinions, in addition to the staff member set forth in Article 53, paragraph (2) of the Act, any staff member who has been engaged in the affairs concerning acceptance of report or notification or the affairs concerning approval of acquisition or holding of voting rights

and rescission and modification thereof related to the case set forth in paragraph (1) of the same Article.

(4) When the Commission has designated the designated staff member, it shall notify the party concerned of the name of such designated staff member.

Section 15 (Assistant for Performing Affairs)

(1) The Commission may have its staff members assist the designated staff member in performing the affairs.

(2) The provisions of Article 53, paragraph (2) of the Act and the provisions of paragraph (3) of the preceding Article shall apply mutatis mutandis to the cases set forth in the preceding paragraph.

Section 16 (Submission of Written Materials, etc. Prior to Date of Hearing)

Prior to the date of the hearing, the designated staff member may require the party concerned to submit written material describing the matters which the party concerned intends to state, the evidence which the party concerned intends to submit, or written material describing the questions which the party concerned intends to address to the investigators, etc. on the date of the hearing pursuant to the provisions of Article 54, paragraph (2) of the Act, where he/she finds it necessary.

Section 17 (Limitation of Statements, etc. and Maintenance of Order on Date of Hearing)

(1) When a person who has appeared on the date of the hearing makes a statement of his/her opinions or submits evidence beyond the scope of the case for the hearing of opinions or otherwise the designated staff member finds it unavoidable in order to ensure proper progress of the hearing of opinions, the designated staff member may limit the statement of opinions or submission of evidence by such person.

(2) In addition to the cases set forth in the preceding paragraph, the designated staff member may take appropriate measures to maintain order on the date of the hearing, such as ordering a person who interferes with the progress or disturbs the order of the hearing of opinions on the date of the hearing to withdraw from the place of the hearing.

Section 18 (Method of Submission of Evidence)

The evidence which is submitted pursuant to the provisions of Article 54, paragraph (2) or Article 55 of the Act shall be accompanied by written material stating the name and address or location of the party concerned, the title of the case, the list of the evidence and the matters to be proved. In this case, when a statement is submitted as evidence,

it shall be submitted by means of a document signed and sealed by the person who gave the statement.

Section 19 (Matters to Be Stated in Written Statement)

The submission of a written statement pursuant to the provisions of Article 55 of the Act shall be made by written material stating the name and address or location of the party concerned, the title of the case and the opinions on the matters listed in Article 50, paragraph (1), items (i) and (ii) of the Act.

Section 20 (Matters to Be Stated in Record of Hearing of Opinions and in Report of Hearing of Opinions, etc.)

(1) The record set forth in Article 58, paragraph (1) of the Act (hereinafter referred to as the "record of the hearing of opinions") must contain the following matters:

- (i) Title of the case
- (ii) Name of the party concerned
- (iii) Date and place of the hearing
- (iv) Name and title of the designated staff member
- (v) Name and title of the staff member set forth in Section 15, paragraph (1)
- (vi) Name and title of the person who appeared on the date of the hearing, name of the interpreter who was present at the hearing and name and title of the investigators, etc. who attended the hearing
- (vii) In cases where a party concerned did not appear on the date of the hearing, whether there was a justifiable ground , for non-appearance
- (viii) Gist of the explanation made by the investigators, etc. set forth in Article 54, paragraph (1) of the Act and the progress of the statements, etc. by the party concerned on the date of the hearing
- (ix) Gist of the statement of the party concerned on the matters listed in Article 50, paragraph (1), items (i) and (ii) of the Act (including the statement of opinions in the written statement submitted pursuant to the provisions of Article 55 of the Act);
- (x) If any evidence was submitted, the list of evidence
- (xi) Other matters to be referred to

(2) Where any written material was submitted pursuant to the provisions of Section 16, the record of hearing of opinion shall be accompanied by such written material, in addition to the evidence provided for in Article 58, paragraph (3) of the Act (or, in cases where the written statement and evidence were submitted pursuant to the provisions of Article 55 of the Act, the written statement and the evidence so submitted).

(3) Any written material, illustration, photograph or other object that the designated staff member finds appropriate may be cited in the record of the hearing of opinions and made a part of the record by attaching the same to the record.

(4) The report set forth in Article 58, paragraph (4) of the Act (hereinafter referred to as the "report of the hearing of opinions") must contain the following matters:

(i) Title of the case

(ii) Name of the party concerned

(iii) Issues of the case related to the hearing of opinions

(5) Any written material, illustration, photograph or other object that the designated staff member finds appropriate may be cited in the report of the hearing of opinions and made a part of the report by attaching the same to the report.

Section 21 (Notice of Preparation of Record of Hearing of Opinions and Report of Hearing of Opinions)

(1) When the designated staff member has prepared the record of the hearing of opinions or the report of the hearing of opinions, he/she shall give notice to the party concerned thereof.

(2) When the designated staff member gives notice pursuant to the preceding paragraph, he/she shall inform that a request for inspection of the record of the hearing of opinions and the report of the hearing of opinions set forth in the preceding paragraph may be made pursuant to the provisions of Article 58, paragraph (5) of the Act.

Section 22 (Procedures for Inspection of Record of Hearing of Opinions and Report of Hearing of Opinions)

(1) In order to make a request for inspection pursuant to the provisions of Article 58, paragraph (5) of the Act, the party concerned shall submit a written request in Form No. 2 to the designated staff member if it is made prior to the conclusion of the hearing of opinions, or to the Commission if it is made after the conclusion of the hearing of opinions; provided, however, that with respect to the inspection on the date of the hearing, it would be sufficient to request orally on that date.

(2) When the designated staff member or the Commission receives the request set forth in the main clause of the preceding paragraph from the party concerned, and he/she or it designates the date, time, place and method with regard to the inspection, he/she or it shall promptly give notice to the party concerned to that effect.

Section 23 (Hearing of Opinions for Payment Order)

The provisions of Sections 9 through 22 shall apply mutatis mutandis to the payment orders. In this case, the term "the facts found by the Commission" in Section 9 and in Section 13, paragraph (1) shall be deemed to be replaced with the term "the basis of calculation of the surcharge and the violation related to the surcharge".

Section 24 (Hearing of Opinions for Competition Restoration Order)

The provisions of Sections 9 through 22 shall apply mutatis mutandis to the competition restoration orders. In this case, the term "Article 17-2 of the Act" in Section 14, paragraph (3) shall be deemed to be replaced with the term "Article 8-4 of the Act"; and the term "the affairs concerning acceptance of report or notification or the affairs concerning approval of acquisition or holding of voting rights and rescission and modification thereof" shall be deemed to be replaced with the term "the affairs concerning investigation of business activities and actual economic conditions related to monopolistic situations".

Section 25 (Hearing of Opinions for Rescission or Modification of Approval)

The provisions of Sections 9 through 22 shall apply mutatis mutandis to the decisions pursuant to the provisions of Article 70-3, paragraph (1) of the Act. In this case, the term "an order pursuant to the provisions of Article 17-2 of the Act" in Section 14, paragraph (3) shall be deemed to be replaced with the term "a decision pursuant to the provisions of Article 70-3, paragraph (1) of the Act"; the term "the affairs concerning acceptance of report or notification or the affairs concerning approval of acquisition or holding of voting rights and rescission and modification thereof related to the case set forth in paragraph (1) of the same Article" shall be deemed to be replaced with the term "the affairs concerning such decision or the approval related to the same"; and the term "investigators, etc." in Section 16 and in Section 20, paragraph (1), items (vi) and (viii) shall be deemed to be replaced with "staff member who has engaged in the affairs related to the decision on the hearing of opinions".

Supplementary Provisions

These rules shall come into effect as of the date of enforcement of the Act for the Partial Revision of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 100 of 2013) (April 1, 2015).