

Rules on Investigations by the Fair Trade Commission

(Fair Trade Commission Rule No. 5 of October 19, 2005)

Pursuant to the provisions of Article 76 (1) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947), the following Rules on Investigations by the Fair Trade Commission are hereby established:

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Chapter I General Provisions

(Purpose of and Definitions in These Rules)

Article 1 (1) The investigation procedures of 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 Fisheries Industry Cooperatives Act (Act No. 242 of 1948), and Article 108 of the Small and Medium-Sized Enterprise Cooperatives Act (Act No. 181 of 1949)), and the Cabinet Order on Designation of Investigators as stipulated in Article 47 (2) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Cabinet Order No. 264 of 1953; hereinafter referred to as "the Cabinet Order on Designation of Investigators"); provided, however, that the procedures for reporting and submitting materials regarding reduction of or release from surcharges, commitment procedures (meaning the procedures under Sections 48-2 to 48-9), and procedures for hearing of opinions conducted by the Commission shall be carried out as otherwise stipulated.

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

(Calculation of Periods of Time)

- Article 2 (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 (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.

(Language)

- Article 3 (1) The Japanese language shall be used for investigation procedures.
- (2) The relevant person shall have an interpreter interpret when a person who cannot communicate in Japanese language is made to give a statement.

(Method of Service by Publication)

- Article 4 The Commission may publish the fact that service by publication has been carried out, in an official gazette or a newspaper. With respect to service by publication in a foreign country, the Commission may provide notice that service by publication has been carried out, instead of publishing this in an official gazette or a newspaper.

(Preparation of Documents)

- Article 5 (1) Except as otherwise provided, any document that is to be prepared in an investigation procedure shall be dated, and shall have a name and seal affixed thereto.
- (2) Where the document under the preceding paragraph is a transcript that is to be prepared by the Commission, the official who prepares said transcript shall note in an adjacent location that the transcript is consistent with the original copy, shall affix his/her name and seal to said transcript, and shall affix his/her seal across the boundary of each of the contiguous pages of the transcript or take other similar measures.

(Correction of Documents)

- Article 6 No letter or character shall be altered in preparing documents for investigation procedures. If any letter or 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 letter or character shall be left visible so that it can be read.

Chapter II Investigation Procedures
Section 1 General Investigations

(Initiation of Investigation Procedures)

Article 7 (1) The Director General of the Investigation Bureau of the General Secretariat shall, upon coming into contact with a clue to the facts of an incident, report his/her opinion to the Commission as to the necessity of proceeding with an investigation.

(2) In the report stipulated in the preceding paragraph, the following matters shall be made as clear as possible:

- (i) The clue;
- (ii) A summary of the facts of the case; and
- (iii) The relevant provisions of the Act.

(3) In the case of a report under paragraph (1), with respect to a case with regard to which the Commission finds that a disposition prescribed in Article 47 (1) of the Act is necessary, the Commission shall designate an investigator and assign him/her to investigate said case pursuant to Article 47 (2) of the Act and the Cabinet Order on Designation of Investigators.

(Identification Card)

Article 8 The form of the identification card stipulated in Article 47 (3) of the Act shall be as shown in the appended form.

(Disposition by an Investigator)

Article 9 (1) Where an investigator carries out a disposition provided for in Article 47 (1) of the Act pursuant to the provisions of Article 47 (2) of the Act, in doing so, he/she shall serve the documents indicated in each of the following items in accordance with the categories set forth in each of those items:

- (i) Where a person concerned with a case or a witness is being ordered to appear for interrogation: a written order to appear
- (ii) Where an opinion or report is being collected from a person prescribed in the preceding item: a written order to report
- (iii) Where an expert is being ordered to appear to provide an expert opinion: a written order to provide an expert opinion
- (iv) Where a person holding accounting books, documents, and other materials is being ordered to submit said materials: a written submission order

(2) The documents prescribed in the preceding paragraph shall include the following information, and a seal shall be affixed across the boundary of each of the contiguous pages thereof:

- (i) The title of the case;
- (ii) The name or title of the counterparty;
- (iii) Requests made of the counterparty;
- (iv) In the case of a written order to appear or a written submission order, the date and place of the appearance or submission; and
- (v) Legal sanctions in the event of noncompliance with the order.

- (3) A written submission order shall state the materials that the relevant person is ordered to submit or a list of their contents.

(Preparation of Records)

- Article 10 (1) A staff member of the Commission shall, when preparing a record provided for in this Section for a case that has its base in the provisions of Article 48 of the Act, give the date of its preparation and the name of the bureau, and sign and seal the record.
- (2) Where the record set forth in the preceding paragraph is prepared, when any letter or character is added, deleted, or shown on the margin of a page, the number of such letters or characters shall be stated in the record.
 - (3) Documents, photographs, and other appropriate materials may be cited and attached to the record set forth in paragraph (1) made a part of that record.
 - (4) A seal shall be affixed across the boundary of each of the contiguous pages of the record stipulated in paragraph (1).

(Record of Interrogation)

- Article 11 (1) The investigator shall, when he/she has interrogated a person concerned with a case or witness pursuant to the provisions of Article 47 (1) (i) of the Act based on the provisions of Article 47 (2) of the Act, prepare a record of the interrogation, read it to the deponent or have him/her inspect it, ask the deponent whether it contains any errors, and if the deponent motions for any addition, deletion, or alteration to the record, include the deponent's statement in the record.
- (2) If the deponent finds no errors in the record under the preceding paragraph, the investigator may ask him/her to sign and seal the record.
 - (3) In the case under the preceding paragraph, when the deponent is unable to sign the record, another person shall sign on his/her behalf, and when the deponent is unable to seal the record, he/she shall affix his/her fingerprint thereto. However, where another person signs on behalf of the deponent, said person shall state the reason therefor in the record and sign and seal it.
 - (4) In the case under paragraph (2), if the deponent refuses to sign and seal the record, such refusal shall be entered into the record.

(Special Rules for Interrogation Via an Interpreter)

- Article 12 (1) An investigator shall, when he/she has interrogated a person concerned with a case or a witness with an interpreter interpreting, state to that effect in the interrogation record, as well as to the effect that the investigator read the record to the person with an interpreter interpreting.
- (2) The investigator may ask the interpreter to sign and seal the record under the preceding paragraph.

(Record of a Statement)

Article 13 (1) Where a person concerned with a case or a witness gives a voluntary statement, a record of the statement shall be prepared when a staff member of the Commission finds it necessary.

(2) The provisions of the two preceding Articles shall apply to the record under the preceding paragraph.

(Written Expert Opinion)

Article 14 When an investigator has caused an expert to give an expert opinion pursuant to the provisions of Article 47 (1) (ii) of the Act based on the provisions of Article 47 (2) of the Act, he/she shall have the expert report on the progress and results thereof in a written expert opinion.

(Record of Retention)

Article 15 (1) When an investigator retains any submitted item pursuant to the provisions of Article 47 (1) (iii) of the Act based on the provisions of Article 47 (2) of the Act, he/she shall prepare a record of such retention.

(2) The record under the preceding paragraph shall incorporate the title of the case, the name, occupation and address or workplace of the owner and the sender of the retained objects, and the date and place of their retention.

(3) A list of the retained objects shall be attached to the record under paragraph (1).

(Notice of Retained Objects, etc.)

Article 16 (1) The investigator shall, when he/she retains any submitted items pursuant to the provisions of Article 47 (1) (iii) of the Act based on the provisions of Article 47 (2) of the Act, notify the sender of said items of their retention in writing.

(2) A copy of the list under paragraph (3) of the preceding Article shall be attached to the documents stipulated in the preceding paragraph.

(3) A copy of the list under paragraph (3) of the preceding Article shall be issued when the owner of the retained objects so requests.

(Return or Temporary Return of Retained Objects)

Article 17 (1) Any retained item that no longer needs to be held in custody shall be returned without waiting for the closure of the case.

(2) Any retained item may be temporarily returned upon the request of its owner or sender.

(Inspection and Copying of Items Ordered to Be Submitted)

Article 18 (1) A person ordered to submit accounting books, documents, and other items in accordance with the provisions of Article 47 (1) (iii) of the Act, may inspect or copy said materials. However, this shall not apply where such inspection and copying of the materials would impede the investigation of a case.

(2) In the case of inspection or copying pursuant to the provisions of the preceding paragraph, the investigator shall designate the date and time, place, and method, taking into consideration the opinion of the person ordered to submit said items.

(Documents Submitted Voluntarily)

Article 19 Where the Commission receives books, documents, or other items that a party concerned or witness has submitted voluntarily, the staff members of the Commission shall, when they find it necessary, request that the party concerned or witness submit a document that states the names, occupations, and addresses of the owner and the sender of the submitted items, as well as a list of the articles and the date on which they were submitted.

(Notice of Alleged Facts, etc.)

Article 20 Where an investigator carries out an inspection pursuant to the provisions of Article 47 (1) (iv) of the Act based on the provisions of Article 47 (2) of the Act, he/she shall deliver a document stating the following matters to the person(s) concerned.

(i) The title of the case;

(ii) The gist of the alleged fact in violation of the provisions of the Act; and

(iii) The applicable provisions of the Act.

(Inspection Record)

Article 21 (1) When an investigator has carried out an inspection pursuant to the provisions of Article 47 (1) (iv) of the Act based on the provisions of Article 47 (2) of the Act, he/she shall prepare an inspection record.

(2) The record under the preceding paragraph shall state the title of the case, the purpose, date, time, and place of inspection, the name and occupation of any person present at the inspection, and the results of the inspection.

(Filing of an Objection to an Investigator's Disposition)

Article 22 (1) When a person subject to a disposition provided for in any of the items of Article 47 (1) of the Act that was made by an investigator based on the provisions of Article 47 (2) of the Act is dissatisfied with the relevant disposition, he/she may file an objection with the Commission within one week from the day he/she became subject to the disposition, by means of a document

stating the grounds therefor.

- (2) When the Commission finds that there are grounds for objection, it shall order the investigator to withdraw, cancel, or change the disposition against which the objection was filed and shall notify the petitioner thereof.
- (3) When the Commission has rejected an objection, it shall notify the petitioner. In this case, it shall indicate the grounds therefor.

(Investigation Result Report)

Article 23 (1) The Director General of the Investigation Bureau of the General Secretariat shall, when the investigation of a case has been closed, promptly report the results to the Commission.

- (2) In a case under the preceding paragraph, in a case in which the investigator made a disposition provided for in Article 47 (1) of the Act based on the provisions of Article 47 (2) of the Act, the following matters shall be made clear in the report:
 - (i) The clues;
 - (ii) The investigation process;
 - (iii) A summary of the facts of the case;
 - (iv) The applicable provisions of the Act; and
 - (v) The opinion of the investigator.

Section 2 Service of a Written Cease and Desist Order, etc.

(Service of a Written Cease and Desist Order, etc.)

Article 24 (1) A certified copy of a written cease and desist order, a written surcharge payment order, and a written competition restoration order, as well as a written decision prescribed in Section 2 of Chapter VIII of the Act (hereinafter referred to as “written cease and desist orders, etc.”), shall be served on the addressee or his/her agent.

- (2) When serving a certified copy of a written cease and desist orders, etc., a written notification stating that an action for revocation of the written cease and desist orders ,etc. may be brought shall be attached to it if the action may be brought.

(Notice to an Entrepreneur not Ordered to Pay Surcharges)

Article 25 (1) Notice pursuant to the provisions of Article 7-2 (18) of the Act (including cases where applied mutatis mutandis under Article 8-3 of the Act. The same shall apply in the following paragraph) and Article 7-2 (21) of the Act shall be given by serving a document stating to that effect.

- (2) The time set forth in the Rules of the Commission, mentioned in Article 7-2 (18) and Article 7-2 (21) of the Act, is the time at which an entrepreneur other

than the relevant entrepreneur shall be notified that an order pursuant to Article 7-2 (1) (including cases where applied mutatis mutandis under Article 7-2 (2) or Article 8-3) or Article 7-2 (4) will not be issued.

Section 3 Warning

(Warning)

Article 26 (1) A warning (meaning, where the Commission finds activities that are or were likely to be in violation of the provisions of Article 3, Article 6, Article 8, or Article 19 of the Act, instructions that are given to the relevant entrepreneur or trade association to cease the activities, to refrain from resuming the activities, or any other necessary matters; the same applies in the following paragraph and Article 30) shall be given in writing, a written warning shall indicate the purpose and contents of the warning, and the Director General of the Investigation Bureau of the General Secretariat shall cause his/her name and seal to be affixed thereto.

(2) A written warning shall be sent to the addressee or his/her agent.

(3) When Commission wishes to issue a warning, it shall give the person who will become the addressee of said warning an opportunity to express his/her opinion and submit evidence in advance of doing so.

(4) A person who will become the addressee of a warning may appoint an agent (limited to attorneys-at-law, legal professional corporations or other appropriate persons approved by the Fair Trade Commission) to express his/her opinion or submit evidence pursuant to the provisions of the preceding paragraph.

(5) When the Commission gives a person who will become the addressee of a warning an opportunity to express his/her opinion and submit evidence pursuant to the provisions of paragraph (3), it shall notify him/her of the following matters in writing, leaving a sufficient period of time prior to the deadline by which he/she may express his/her opinions and submit evidence:

(i) The purpose and content of the planned warning; and

(ii) The fact that he/she may express his/her opinion in writing and submit evidence on the matters indicated in the preceding item to the Commission, and the deadline therefor.

(6) Where the Commission has recognized that there is a justifiable reason to do so, it may extend the deadline stipulated in item (ii) of the preceding paragraph on its own authority or upon petition.

(Certification of the status of agents, etc.)

Article 27 (1) The status of agents under paragraph (4) of the preceding Article shall be certified in writing.

(2) When the agent under paragraph (4) of the preceding Article becomes divested of his/her status, the party who appointed the agent shall promptly give written notice thereof to the Commission.

(Format of a Statement of Opinion, etc.)

Article 28 (1) The person who has received the notice under paragraph (5) of the Section 26 may state his/her opinion in writing and provide evidence on the matters indicated in Article 26 (5) (i) to the Commission by the designated deadline. In this case, when he/she submits a statement as evidence, he/she shall do so by means of a document signed and sealed by the declarant.

(2) Where evidence is submitted pursuant to the provisions of the preceding paragraph, it shall clarify the matters that must be proved.

(3) Notwithstanding the provisions of paragraph (1), where the Commission finds it particularly necessary to do so, it may have a person state his/her opinion orally. In this case, the Commission shall designate a staff member to hear the opinion, and shall notify the person who wishes to state an opinion of the date, time, and place for him/her to state that opinion.

(4) When providing notice in accordance with the provisions of the preceding paragraph, the Commission shall, in advance, hear the opinion of the person stating his/her opinion regarding the date, time, and place for the opinion to be heard.

Chapter III Auxiliary Provisions

(Notice to the Reporting Person)

Article 29 (1) Notice pursuant to the provisions of Article 45 (3) of the Act shall be given where the report pursuant to Article 45 (1) was made in the form of a document stating the matters indicated in each of the following items:

- (i) The name or title and address of the reporting person;
- (ii) The name or title of the person who is or was engaging in activities that the reporting person considers to be in violation of the provisions of the Act; and
- (iii) Concrete details of the form, time, place, and other facts of the activities that the reporting person considers to be in violation of the provisions of the Act

(2) The notice set forth in the preceding paragraph shall also be given where a report containing the matters indicated in each item of the preceding paragraph has been transmitted via electrical telecommunication lines using

an electronic information processing system, and where said report is clearly presented in a document via the use of a computer (including its peripheral devices) or other equipment used by the Commission.

- (3) The notice set forth in paragraph (1) shall, in the cases described in the following items, be given via a document stating to the effect set forth in each of those items. However, when notice pursuant to item (i) has been given, no subsequent notice shall be given with regard to a case connected to the same report.
- (i) Where a cease and desist order is issued in the relevant case;
 - (ii) Where an order for payment is issued in the relevant case;
 - (iii) Where a exclusion measures plan or a plan for measures to ensure exclusion was approved in the relevant case; and
 - (iv) Where it has been decided that neither of the measures indicated in the preceding items will be taken in the relevant case.
- (4) In the document set forth in the preceding paragraph, in addition to the matters that are to be stated based on the provisions of that paragraph, any matters that are found to be appropriate may also be stated.

(Submission of Documents by Facsimile)

- Article 30 (1) Documents to be submitted during an investigation may be submitted by facsimile, excluding the following documents:
- (i) Documents to be submitted pursuant to the dispositions indicated in each item of Article 47 (1) of the Act;
 - (ii) Written opinions and evidence in connection with the notice prior to a warning;
 - (iii) Written materials prescribed in under paragraph (1) and (2) of the Section 27; and
 - (iv) Written motions objecting to a disposition made by an investigator.
- (2) Where a document is submitted via facsimile, it shall be deemed to have been submitted to the Commission at the time that the Commission receives it.
- (3) The chairman or an investigator may, when necessary in a case provided for in the preceding paragraph, have the submitter submit the original of the transmitted document.

(Decision for Corrections)

- Article 31 (1) When there is a clear error, including a transcript error, in the written cease and desist orders, etc. the Commission may correct the error on its own authority or upon petition.
- (2) An objection to a correction decision may be filed in writing with the Commission within two weeks of the date on which a certified copy of the written decision was served.

(3) When the Commission has rejected an objection under the preceding paragraph, it shall notify the petitioner to that effect.