

# PRIOR CONSULTATION SYSTEM FOR ACTIVITIES OF BUSINESSES, ETC.

October 1, 2001  
Fair Trade Commission

## **1. Purpose**

The Fair Trade Commission will establish a system, and a procedure for the system, to consult with and respond to businesses, etc. with respect to whether a specific act to be carried out by businesses, etc. conflicts with the provisions of laws and ordinances governed by the Fair Trade Commission. This will be done to improve the transparency of the application of the law, and to increase the predictability of the application of laws to the acts of businesses. The system and procedure will be as follows.

General consultations not based on this system will be handled as in the past.

## **2. Acts covered**

Acts covered by the prior consultation shall be specific acts to be carried out by businesses or associations of businesses that are not certain to conflict with the Act Concerning the Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947) (hereinafter referred to as "Antimonopoly Act"), the Act Against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (Law No. 120 of 1956) (hereinafter referred to as the "Subcontract Act"), and the Act Against Unjustifiable Premiums and Misreading Representation (Law No. 134 of 1962) (hereinafter referred to as the "Premiums and Representation Act") (these three acts will be collectively referred to as "Acts" hereinafter). However, consultations about the merger, division and acquisition of business as provided in Chapter 4 of the Antimonopoly Act shall not be covered by this system.

## **3. Requirements for application**

An application for prior consultation, if satisfying all of the following requirements, shall be examined.

- (1) A business or an association of businesses, which will carry out an act that will be the subject of consultation (hereinafter referred to as “applicant”), files an application.
- (2) An applicant indicated specific individual facts concerning an act to be carried out in the future.
- (3) An applicant agrees that the name of the applicant and the details of consultation and response will be published.

#### **4. Method for application**

- (1) A person, who will apply for the prior consultation, shall submit an application for prior consultation (including electronic application. This shall apply hereinafter.) that was selected out of the forms shown in attachments 1 to 5 (note) based on an act for said consultation. A document showing the gist of the consulted matters shall be attached to an application for prior consultation (if any corporate secret is included in an application for prior consultation and a document showing the gist of consulted matters, the part that is a corporate secret shall be clearly shown.)
- (2) Applications for prior consultation shall be submitted to the Director-General of Trade Practices Department, Economic and Trade Affairs Bureau, General Executive Office of the Fair Trade Commission. Applications may be submitted through local offices (offices that accept applications for prior consultation are shown in the attachment 6.)
- (3) When an application for prior consultation does not satisfy the requirements for an application as shown in 3 above, the applicant shall be notified thereof orally or in writing (including electronic mail. This shall apply hereinafter.).
- (4) When an applicant showed in an application for prior consultation that the applicant desires to defer the timing of publication, together with a reason and the possible timing of publication, it shall be examined without delay, and the applicant shall be notified of the acceptance or rejection thereof in writing without delay within the period for response as shown in 8 below.

(Note) These forms are omitted.

#### **5. Revision of an application for prior consultation**

The revision of an application for prior consultation may be requested from an applicant to the extent necessary to apply for this system (including the additional submission of

materials, etc. which are acknowledged as necessary for responding to an application).

## **6. Withdrawal of a consultation**

When an applicant proposes to withdraw an application before a response is given as shown in 8 below, no response to a consultation based on the application shall be given. In this event, the provision shown in 10 below will not apply to the consultation.

## **7. Examination and inquiries, etc.**

When an application for prior consultation is submitted, an examination shall be made with respect to whether an act shown in the application for prior consultation conflicts with laws or not. In the examination, hearings from third parties may be held and many opinions may be gathered as necessary, with the approval of the applicant.

## **8. Examination and inquiries, etc.**

### (1) Period for response

A response in writing shall be given in principle within 30 days of the receipt of an application for prior consultation. However, where the additional submission of materials, etc. acknowledged as necessary for giving a response was requested after the receipt of an application for prior consultation, a response shall be given within 30 days of the receipt of all materials, etc.

### (2) Extension of the period for response

A written response on prevailing views concerning whether an act shown in an application for prior consultation conforms with the provisions of laws or conflicts with the provisions of laws shall be given on the premises of facts shown in the application for prior consultation.

A period or conditions may be attached to a response if necessary.

### (3) Method for response

When a response is not given within the prescribed period for response based on the

reasonable grounds that a careful judgment is required, or that serious trouble has occurred with the procedures because of the submission of many applications for prior consultation, exceeding the administrative capacity of a section or office in charge, applicants shall be notified in writing of the reasons and expected date for the response.

#### (4) Matters to which a response shall not be given

If one of the following applies, a response may not be given after notifying the applicant of the specific reasons thereof.

- a. When involved in private disputes because a matter closely related to consultation is an object of a lawsuit, etc.
- b. When information necessary for the Fair Trade Commission to make proper judgments cannot be obtained from an applicant or other businesses, etc.
- c. Consultation on matters the legal interpretation of which is already clear based on commentaries publicly provided, or when a consultation is similar to a consultation the response to which is published on the website of the Fair Trade Commission
- d. When giving a response may possibly cause trouble with examination activities or hearing procedures.
- e. When a consultation, etc. about joint research development or a patent and know-how licensing agreement requires the assessment of the details of technologies or the effects on a future product market (in the case of consultation about the Antimonopoly Act)
- f. When the effects, etc. of commodities and services are not clear (in the case of consultation about the Premiums and Representation Act)

#### (5) Effect of response

When a response was given to the effect that there is no conflict with the provisions of laws as shown in 1 above, no legal measure shall be taken against an act covered in the consultation because of a conflict with the provisions of laws. However, this shall not apply if any statement, which differs from the facts, is included in an application for prior consultation or submitted materials, etc., an act different from an act shown in an application was carried out, or an act was carried out that exceeds the limit of the period shown in the response or that is in breach of the conditions shown in the

response.

### **9. Withdrawal of a response**

When any change, including a significant change in the status of an applicant, etc. in the market related to an act covered by a consultation, etc., occurs in the facts underlying the judgment for a response, or it is otherwise acknowledged as improper to maintain a response after the response was given as shown in 8(1) as above to the effect that there is no conflict with laws, all or part of the response may be withdrawn by issuing a document showing the reasons. In this event, no legal measure shall be taken against an act covered by the consultation in question, in principle until after all or part of the response was withdrawn and a reasonable period has passed for the necessary measures to be taken.

### **10. Publication of prior consultations**

#### (1) Details of publication

The names of applicants and the details of consultation and response will be published on the website, etc. of the Fair Trade Commission. However, if the details of consultation and response include any information that is eligible for non-disclosure as provided in the Law Concerning Disclosure of Information Held by Administrative Agencies (Law No. 42 of 1999), said information may be excluded from disclosure.

#### (2) Time for publication

The names of applicants and the details of the consultation and response shall be published within 30 days of the date of the response in principle.

#### (3) Extension of time for extension

When an applicant showed in an application for prior consultation a reason to desire an extension of the time for publication and the date of possible publication, and the reason is acknowledged as proper, publication may be made more than 30 days from the date of the response. However, in this event, the time for publication may not necessarily be extended to the time desired by an applicant. When a reason to defer the time for

publication disappears, publication may be made after notifying the applicant thereof.

Appendix

**Offices In Charge of Prior Consultation**

Name of Offices	Location	Jurisdictional Area
Consultation and Guidance Office, General Secretariat, Fair Trade Commission	Central joint Office Bldg. #6-B 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo (postcode 100-8987) Tel. (03) 3581-5471	Ibaraki, Tochigi, Gunma, Saitama, Chiba, Kanagawa, Niigata, Nagano, and Yamanashi Prefectures and Tokyo-to
Hokkaido Office	Sapporo Joint Office Bldg. #3 12 Odori Nishi, Chuo-ku, Sapporo (postcode 060-0042) Tel. (011) 231-6300	Hokkaido
Tohoku Office	Sendai joint Office Bldg. #2 3-2-23 Honcho, Aoba-ku, Sendai (postcode 980-0014) Tel. (022) 225-7095	Aomori, Iwate, Miyagi, Akita, Yamagata, and Fukushima Prefectures
Chubu Office	Nagoya Joint Office Bldg. #2 2-5-1 Sannomaru, Naka-ku, Nagoya (postcode 460-0001) Tel. (052) 961-9421	Toyama, Ishikawa, Gifu, Shizuoka, Aichi and Mie Prefectures
Kinki-Chugoku-Shikoku Office	Osaka Joint Office Bldg. #4 4-1-76 Ohtemaeno-machi, Chuo-ku, Osaka (postcode 540-0008) Tel. (06) 941-2173	Fukui, Shiga, Hyogo, Nara, and Wakayama Prefectures and Kyoto and Osaka-fu
Chugoku Branch	Hiroshima Joint Office Bldg. #4 6-30 Kamihachichobori, Naka-ku, Hiroshima (postcode 730-0012) Tel. (082) 228-1501	Tottori, Shimane, Okayama, Hiroshima, and Yamaguchi Prefectures
Shikoku Branch	Takamatsu Regional Joint Office Bldg. #2	Tokushima, Kagawa, Ehime, and Kochi

	1-17-33 Matsushima-cho. Takamatsu (postcode 760-0068) Tel. (0878) 34-1441	Prefectures
Kyushu Office	Fukuoka Joint Office Bldg, #2 Annex 2-10-7 Hakataeki-higashi, Hakata-ku, Fukuoka (postcode 812-0013) Tel (092) 431-5881	Fukuoka, Saga, Nagasaki, Kumamoto, Ohita, Miyazaki, and Kagoshima Prefectures
Fair Trade Office, Okinawa General Bureau, Okinawa Development Agency	Fuso Bldg, 2-21-13 Maejima, Naha (postcode 900-0016) Tel. (098) 863-2243	Okinawa Prefecture