

PRINCIPLES CONCERNING THE ACTIVITIES OF ASSOCIATIONS OF QUALIFIED PROFESSIONALS UNDER THE ANTIMONOPOLY ACT

October 24, 2001
Fair Trade Commission

Introduction

1. The establishment of an association of qualified professionals is legally required for eight of the qualified administrative professions in which business monopolies are permitted: certified public accountants, administrative scriveners, attorneys in private practice, judicial scriveners, registered land and building investigators, certified tax accountants, public consultants on social and labor insurance and patent agents. Those qualified to practice these professions must become members of the relevant associations of qualified professionals. (Associations of the eight qualified professions which have these characteristics will hereinafter be referred to as “associations of qualified professionals” in these Principles.) Associations of qualified professionals must legally establish rules on maintenance of the dignity of members and member training, and members are required to comply with these rules.

Regarding associations of qualified professionals, the Three-Year Programme for Promoting Deregulation, which was approved by the Cabinet on March 30, 2001, stated that a revision of the modalities of the system should be carried out from the perspective of invigorated competition related to the business services concerned, and revisions are moving forward in each government ministry and agency and association. It has been pointed out, however, that the relationship between the activities of associations of qualified professionals, which are required to carry out self-imposed regulations based on the act as mentioned above, and the Antimonopoly Act has become difficult to understand. In addition, there are cases where The Fair Trade Commission of Japan issued a warning over the possibility of activities of associations of qualified professionals violating the Antimonopoly Act.

Thus, The Fair Trade Commission of Japan, in order to contribute to self-imposed regulations revisions and appropriate post-revision activities by associations of qualified professionals, decided to draw up and publicize the principle of the Antimonopoly Act regarding activities of associations of qualified professionals.

2. The Fair Trade Commission of Japan in 1995 publicized Guidelines Concerning the activities of Trade Associations under the Antimonopoly Act, which specify principles of the Antimonopoly Act regarding the activities of trade associations, and basically the same guidelines also apply with regards to the activities of associations of qualified professionals.

Regarding these Principles, the principles of the Antimonopoly Act have been arranged based on the principles of the above guidelines with regards to the activities of associations of qualified professionals, in particular activities related to remunerations, advertising and clients, which are deemed as having a significant effect on competition among members. In addition, assumed examples are included as reference examples based on past investigations and consultations for each type of actions regarding whether acts become or do not become issues under the Antimonopoly Act. Overviews of recent main consultations from associations of qualified professionals have been compiled and included in the end.

Types of actions and examples mentioned in these Principles are only typified examples, and including matters not specified here, whether or not the specific actions of associations of qualified professionals are violations is determined based on the provisions of the Antimonopoly Act for each individual case based on the content of business of each qualified professional and the conditions of the market.

3. As mentioned above, system revisions are moving forward with regard to associations of qualified professionals based on the Three-Year Programme for Promoting Deregulation. Thus, necessary revisions with regard to these Principles will be carried out based on the conditions of the system revisions.

Because these Principles specify general principles regarding the activities of associations of qualified professionals, it is deemed that it will not be easy for associations of qualified professionals to determine whether or not individual, specific activities become issues under the Antimonopoly Act. These cases will be handled through individual consultation with The Fair Trade Commission of Japan .

Section I. Associations of Qualified Professionals and the Antimonopoly Act

The Antimonopoly Act prohibits actions by trade associations which restrict competition (Section 8-1).

Qualified professionals are based on the Public Qualification System which was established to secure the rights of citizens and bring about appropriate trading. When qualified professionals conduct economic activities as business receiving remuneration and repeatedly or continuously providing services, they correspond to entrepreneurs stated in the Antimonopoly Act. Associations of qualified professionals are set up with the objective of carrying out affairs in order to maintain the dignity of qualified professions and promote the improvement of business operations. Entrepreneurs who practice qualified professions are members, and activities are carried out in order to promote the common interests of members such as training regarding operations and survey research aimed at improving business operations. Associations of qualified professionals which carry out these types of activities correspond to the trade associations in the Antimonopoly Act and are subject to the Antimonopoly Act.

Regarding associations of qualified professionals in particular, a system of mandatory membership has been adopted, and qualified professionals must become members of an association in order to practice their profession. Thus, if actions restricting competition in associations of qualified professionals take place, the effect on competition will be even greater.

Thus, regarding activities carried out by associations of qualified professionals, it is necessary to pay attention in making sure that the functions and activities of members are not unjustly restricted, and the benefits of demanders are not unjustly harmed.

Section II. Principles of the Antimonopoly Act Concerning Main Activities of Associations of Qualified Professionals

1. Activities Related to Remuneration

The price of goods or services provided by entrepreneurs are the most important means of competition for the entrepreneurs, and restrictions by trade associations on the price of goods or services provided by constituent entrepreneurs become issues under the Antimonopoly Act.

Restrictions by associations of qualified professionals regarding the receipt of

remunerations by members also become issues under the Antimonopoly Act, as they do with regular trade associations. Regarding associations of qualified professionals, however, there are cases where the statement of standards by the associations with regards to remuneration received by individual members is designated by the act. Therefore, it is deemed that as long as the remuneration set by associations of qualified professionals based on provisions are limited to being used as a standard when individual qualified professionals set remunerations, they do not become issues under the Antimonopoly Act. Even in these cases, however, the act of using the remuneration set by the associations of qualified professionals based on the act as a set amount or setting standards regarding remuneration related to operations not set by the associations according to the act, becomes an issue under the Antimonopoly Act.

(1) Cases That Become Issues under the Antimonopoly Act

The acts by associations of qualified professionals to substantially restrict competition in the market through the following actions are violations against the provisions of Section 8-1-1 of the Antimonopoly Act.

- i. In cases where the statement of standards by the associations with regards to remunerations is designated by the act,

To prohibit reduction of set remunerations or make it such that remunerations are received where remuneration reductions are set within a certain percentage of the remuneration, or

To set standards regarding remunerations related to business besides the business of qualified professionals for which the setting of remuneration standards is designated by the act; or

- ii. In cases where the statement of standards by the associations with regards to remunerations received by qualified professionals is not designated by the act to provide a common reference to remuneration received by members such as standard remunerations or target remunerations,

Even in cases in which competition in the market is not substantially restricted, these actions are violations in principle against the provisions of Section 8-1-4 of the Antimonopoly Act.

The following examples become issues under the Antimonopoly Act.

<Reference example 1>

Association of qualified professional A received complaints from its members that some

members were entrusted with business with unjustly low remuneration. The association, regarding the remuneration set by a remuneration chart established by the association based on the act, instructed its members to comply with remuneration set by a remuneration chart at the time of entrustment of business, carrying out such actions as:

{1} Creating and distributing to members an instruction manual prohibiting to receive remuneration other than that set by a remuneration chart;

{2} Engaging in thorough publicizing of the content of the instruction manual concerned to members at operation workshops; and

{3} Stating the remuneration set by a remuneration chart in the remuneration column of the receipt form that members deliver to clients, which the association was selling to members.

<Reference example 2>

Association of qualified professional B, based on the act, was setting a remuneration chart regarding the business of qualified professionals for which remuneration standards are set as designated by the act, and members expressed their desire for the association to set a remuneration chart with regards to business for which remuneration standards are not set as designated by the act. The association created another remuneration chart indicating standards for remuneration for these businesses and distributed it to members.

(2) Cases That Do Not Become Issues under the Antimonopoly Act

There are cases where associations of qualified professionals carry out information activities and such regarding remuneration received by members. When a tacit understanding and common intentions are formed among members regarding restrictions on remuneration through these information activities, or if these information activities become means or methods in which acts restricting competition are carried out, they become issues under the Antimonopoly Act. Carrying out the following activities, however, is not an issue under the Antimonopoly Act in principle.

i. To collect general information on remuneration from the past records of the members randomly so as to provide information on the past remuneration to the demanders, members, etc. and conduct statistical processing objectively, accurately presenting the distribution and trend in the fluctuation of remuneration, as well as providing, including to the demanders, general information without disclosing the remuneration

of individual members (limited to those that do not provide a common reference to the remuneration amongst the members).

<Reference example>

Association of qualified professionals A decided to create and publicize statistical materials related to remuneration for the purpose of contributing to the selection by clients. Specifically, the association randomly carried out an anonymous questionnaire survey among members regarding remuneration received by members in the past for each typical type of business. The association, based on the compiled data, created a chart stating the highest, average, and lowest remuneration for each type of business concerned and publicized it on the Internet, etc.

- ii. To create a general method giving standard expense items, etc. regarding cost accounting and calculation, and based on this, to carry out general guidance regarding methods for cost accounting and calculation (limited to those that do not provide a common reference to the remuneration and calculation amongst the members).

<Reference example>

Association of qualified professionals A, upon receiving complaints from clients that the basis of remuneration is difficult to understand, created a guidebook regarding the calculation methods of remuneration received by its members, including multiple examples of calculation methods such as: (i) methods for calculating remuneration by units of time, (ii) methods for calculating remuneration by the number of pages of documents created, (iii) methods for calculating remuneration by adding remuneration contingent on success to certain basic remunerations, and (iv) methods for calculating remuneration by invested capital. Regarding costs used as foundations when calculating remuneration, the guidebook also gave examples of general expense items such as fixed expenses, direct labor costs, indirect labor costs and advertising expenses without showing specific units costs. The association then distributed the guidebook to members as well as demanders in each of its units and branches, etc.

2. Activities Related to Advertising

Advertising carried out by entrepreneurs is an important means of competition which rouses the demand of demanders. Regarding advertising carried out by constituent entrepreneurs, a trade association's act of carrying out self-imposed regulations where

restrictions are added to the provision of information contributing to appropriate selection by demanders, becomes a possible issue under the Antimonopoly Act.

Regarding associations of qualified professionals, “provisions with regards to the maintenance of the dignity of members” are given as items by the associations according to the act. With these provisions as a major foundation, the associations carry out self-imposed regulations with regards to advertising. Even though the regulations regarding advertising carried out by associations of qualified professionals hold a certain degree of foundation on the act, cases where the business activities of members are excessively restricted become possible issues under the Antimonopoly Act. Therefore, it is necessary that self-imposed regulations stay within the range of what is reasonably necessary to help appropriate selection by demanders, and it is required that self-imposed regulations not be wrongfully discriminatory among members.

When associations of qualified professionals carry out self-imposed regulations with regards to advertising, it is desirable that the associations set up sufficient opportunities to hear the opinions of members as is necessary and sufficiently carry out exchange and hearing of opinions among demanders of the relevant service and knowledgeable third parties.

(1) Cases That Become Possible Issues under the Antimonopoly Act

The act of adding restrictions to the provision of information that contributes to appropriate selection by demanders, such as limiting the media or frequency, place and content of advertising carried out by members, becomes a possible issue under the Antimonopoly Act. In addition, the act of substantially restricting competition in the market through these types of actions is a violation against the provisions of Section 8-1-1 of the Antimonopoly Act.

The following are possible examples that become issues under the Antimonopoly Act.

<Reference example 1>

Association of qualified professionals A, upon receiving concerns by its members that carrying out advertising on a broad scale had an adverse effect on the image of the qualified professionals, set the following rules regarding advertising.

- i. The mediums that can be used for the operation of advertising are limited to business cards, billboards, greeting cards, telephone directories and office newsletters.

ii. The placement of billboards is limited to within office property, and billboards must be 1.2 square meters or less in size. Greeting cards are limited to New Year's cards and cards sent upon the establishment of an office. Advertisements in telephone directories must be one-eighth of a page or less in size. Office newsletters can only be published 4 times a year or less, and distribution of newsletters is limited to clients, former clients, friends and relatives.

<Reference example 2>

Association of qualified professionals B, upon receiving opinion by many of its members that qualified professionals should take a passive stance of practicing their profession after receiving requests of business from their clients, set rules within the association stating that members could not advertise their own operations and decided to set rules regarding restrictions on the advertising of certain exceptional items which can be advertised.

In the said rules, the association limited the items which could be advertised to addresses, names, contact information and operations handled.

<Reference example 3>

Association of qualified professionals C, upon receiving opinion by its members that attracting clients by stating the low remuneration harms the dignity of qualified professionals, uniformly prohibited, in the rules regarding advertisements regarding the amount of remuneration.

(2) Cases That Do Not Become Issues under the Antimonopoly Act

Cases where it is recognized that restrictions with regards to advertising carried out by associations of qualified professionals have been imposed for the purpose of helping appropriate selection by demanders, by eliminating false or exaggerated advertisements and setting requirements for minimum items that should be advertised for demanders as stated below, do not become issues in principle under the Antimonopoly Act. Even in cases where the purpose is to eliminate false or exaggerated advertisements, however, it is necessary to be careful so as not to broadly restrict the content and method of advertising of members in its operation.

<Reference example 1>

Association of qualified professionals A set rules allowing its members to in principle freely carry out advertising regarding their business, and decided to prohibit, in the

rules regarding advertising, the following items as items that unjustly harm the profits of demanders:

- To carry out advertising which is inconsistent with the truth.
- To carry out advertising which could lead to misunderstandings or misperceptions.
- To carry out advertising which violates the acts or rules of associations of qualified professionals.
- To carry out advertising which displays past clients (excluding cases where the consent of clients is obtained).

<Reference example 2>

Association of qualified professionals B, upon receiving the opinion by demanders that they are concerned with the situation of not knowing how much it will cost when they request a business to qualified professionals, decided in the rules regarding advertising that its members were to put up a notice in the office regarding the amount of remuneration they received.

3. Activities Related to Clients

The trade association's act of restricting the activities by constituent entrepreneurs to acquire clients damages the essential function of competition and therefore becomes an issue under the Antimonopoly Act.

There are cases where associations of qualified professionals impose restrictions on attracting clients, etc. in the rules, and such actions become issues under the Antimonopoly Act, as they do with regular trade associations.

(1) Cases That Become Issues under the Antimonopoly Act

The act by associations of qualified professionals to substantially restrict competition in the market through acts such as (i) prohibiting transactions with the clients of other members, (ii) restricting areas where business activities are carried out, and (iii) allocating operations among members are violations against the provisions of Section 8-1-1 of the Antimonopoly Act. Furthermore, even in the cases of not substantially restricting competition in the market, in principle, these actions are violations against the provisions of Section 8-1-4 of the Antimonopoly Act.

The following examples become possible issues under the Antimonopoly Act.

<Reference example 1>

Association of qualified professionals A, in order to prevent its members from taking clients from one another, in its rules with regard to ethics, uniformly prohibited carrying out acts to attract clients with whom members were not acquainted. It also decided, in cases where a member tried to receive a request from a client and the said client already had a previous trading record with another qualified professional, that the said member must obtain consent from the said qualified professional.

<Reference example 2>

Association of qualified professionals B was set up by qualified professionals residing in X prefecture. In order to maintain good relations with associations of qualified professionals in the adjacent prefectures Y and Z, Association B, in its rules with regard to ethics, decided that it would not allow its members to carry out acts of attracting demanders from outside X prefecture. Furthermore, Association B decided that when its member received requests of operation by demanders, the member must refrain from accepting such entrustment and introduce to the demander to the members of associations in the prefecture in which the demander resides.

<Reference example 3>

Association of qualified professionals C, upon receiving concern by many of its members that an increase in the number of offices would lead to members taking clients from one another, decided, despite the fact that the act does not stipulate any restrictions regarding the establishment of offices, that permission from the association would be necessary in order for its members to establish multiple offices.

<Reference example 4>

Association of qualified professionals D, upon receiving complaints by its members that only certain members were being entrusted with a large amount large-scale business, decided in the general assembly of the association that it would start to act as a middleman for the entrustment of operations of a certain scale and for the allocation of operations among its members, considering the members' past operations that they had been entrusted with. Association D also prohibited its members to receive requests for business individually.

(2) Cases That Do Not Become Issues under the Antimonopoly Act

Cases where restrictions regarding clients carried out by associations of qualified professionals are for the purpose of maintaining a fair order of competition, including

the prohibition of attracting clients through unfair means of competition, such as abusing or slandering other members and unjustly providing cash, goods, or entertainment in light of normal trade practices, do not become issues in principle under the Antimonopoly Act. However, even in cases where the purpose is to prohibit attracting clients through means of unfair competition, it is necessary to pay attention so as not to impose broad restrictions on activities for the members to acquire clients.