

The Fair Trade Commission's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Antimonopoly Violations
(Tentative translation)

October 7, 2005

Revised as of October, 23, 2009

Fair Trade Commission

In accordance with the Act to Amend the Act Concerning the Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.51 of 2009), the Act Concerning the Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as "the Act") was amended to introduce the provisions with respect to a reduction of or immune from surcharge when at least two enterprises who have committed the violative act in Section 7-2 (1) of the Act submitted reports and materials regarding the said act in concert with each other, and others. Since the amended Act concerning the reduction of or immune from surcharge comes into effect on January 1, 2010, the Fair Trade Commission (hereinafter referred to as "FTC") will investigate and file an accusation against criminal cases (meaning the cases pertaining to crimes Section 89 through 91 under the Act; hereinafter the same shall apply.) in line with the following policy on and after the said date in order to ensure appropriate enforcement of the amended Act.

1. The Policy on Criminal Accusation

(1) The FTC will actively accuse to seek criminal penalties on the following cases:

- a. Vicious and serious cases which are considered to have wide spread influence on people's livings, out of those violations which substantially restrain competition in certain areas of trade such as price-fixing cartels, supply restraint cartels, market allocations, bid-rigging, group boycotts, private monopolization and other violation.
- b. Among violation cases involving those firms or industries who are repeat offenders or those who do not abide by the elimination measures, those cases for which the administrative measures of the FTC are not considered to fulfill the purpose of the Act.

(2) However, the FTC will not file accusations against:

- a. The first enterprise that solely submitted reports and materials concerning the immunity from the surcharge before the investigation start date. (meaning the enterprise that submitted reports and materials pursuant to the provision of Section 7-2 (10) of the Act. However, not shall apply this provision to the enterprise who is found to be fallen under any of the paragraphs of Section 7-2 (17) of the Act; the said reports or documents contains false information, the said enterprise fails to submit the reports or materials or submits false reports or materials in response to the additional requests, and the said enterprise coerced another enterprise to commit the violative act or blocked another enterprise from ceasing to commit of the violative act.)

- b. The first enterprise that submitted reports and materials concerning the immunity from the surcharge before the investigation start date in concert with another enterprise. (meaning the enterprise that submitted reports and materials pursuant to the provision of Section 7-2 (13) and (10) of the Act. However, not shall apply this provision to the enterprise who is found to be fallen under any of the paragraphs of Section 7-2 (17) of the Act; the said reports or documents contains false information, the said enterprise fails to submit the reports or materials or submits false reports or materials in response to the additional requests, and the said enterprise coerced another enterprise to commit the violative act or blocked another enterprise from ceasing to commit of the violative act.)

- c. The officer, employee, or other person of the enterprise in a. and b. who committed the violative act of the Act and is deemed to be in a circumstance to be treated as same as the said enterprise, regarding the said enterprise's submission of reports and materials to the FTC, response to the investigation by the FTC following the said submission, and others.

(Note) "The investigation start date" means the date when the FTC initiates its on-the-spot inspection, official inspection and search, etc., regarding the case relating to the violative act.

2. Compulsory Investigation of Criminal Cases

The FTC will assign the staff members for criminal investigation to investigate the suspicious case of the violation of the Act where there is a considerable reason for suspicion of being fallen under 1. (1) a. or b. above. As the result of the criminal investigation, where it is convinced that a criminal offense fallen under 1. (1) a. or b. above has taken place, FTC files an accusation.

(Note) In accordance with the amendment of this time, the FTC acquires the authority of compulsory investigation regarding criminal cases.

3. The Conference of Criminal Accusation

At the time of consideration of criminal accusations, in order to ensure smooth and appropriate criminal accusation, the FTC with the prosecutorial authorities will hold “the Conference of Criminal Accusation” consisting of prosecutors under the Prosecutor in Finance and Economic Section of Supreme Public Prosecutors Office (the prosecutorial authorities side) and the Director General and officers of the Compulsory Investigation Department (the FTC side), and exchange opinions and information on concrete problems of each of the said case.