

# Rules on Hearing by the Fair Trade Commission

Fair Trade Commission Rule No.8 of 2005

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## **Chapter I General Rules**

### **Section 1 [Purpose and Definition]**

The proceedings of hearings of the Fair Trade Commission (hereinafter referred to as “Commission”) shall follow these Rules and the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947. Hereinafter referred to as “the Act”) Including where the Act is applied in Section 95-4 of the Fishery Industry Cooperative Association Law (Law No. 242 of 1948)), and Section 108 of the Law on Cooperative Association of Small and Medium Enterprises (Law No. 181 of 1949), the Act against Unjustifiable Premium and Misleading Representation (Law No. 34 of 1962); provided, however, that the hearing procedure stipulated in Section 53 (1) and Section 70-12 (1) of the Act and Section 12 (6) of the Act against Unjustifiable Premium and Misleading Representation 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 meaning as the terms used in the Act.

### **Section 2 [Computation of Period]**

The computation of period shall be made according to the provisions of the Civil Code (Law No. 89 of 1896) concerning period.

2. If the last day of a period falls on any of the days mentioned in the items of Subsection 1 of Section 1 of the Law for Closed Days of the National Administrative Organs (Law No. 91 of 1988), the period shall expire at a day following the said last day.

### **Section 3 [Language]**

The Japanese language shall be used in the hearing procedure.

### **Section 4 [Method for Official Notice]**

The Commission may insert the official notice into an official gazette or newspaper. With respect to the official notice to be served in a foreign country, the Commission may notify that the official notice was served instead of inserting it into the official gazette or newspapers.

### **Section 5 [Preparation of Documents]**

Unless otherwise specially stipulated, any document to be prepared for the proceeding of hearing procedure shall be dated, signed and sealed.

2. When the document mentioned in the preceding subsection is a duplicate to be made by the Commission, the official who made the duplicate shall note that the duplicate does not differ from its original in a place contiguous to the concerned statement, shall sign and seal the duplicate, and shall impress a seal across it and the contiguous leaf or take similar action.

### **Section 6 [Correction of Documents]**

No character shall be altered in preparing documents for the proceedings of a hearing. If any character is added, deleted or shown in the margin of a page, a seal shall be impressed on it for confirmation. In this case, any deleted character shall remain legible.

### **Section 7 [Submission of Documents by Facsimile]**

The documents to be submitted for the hearing, excluding the following documents, may

be submitted using facsimile.

- (1) Documents to be submitted based on measures that were taken by the hearing examiner pursuant to the provision of Section 56 (1) of the Act, as mentioned in each item of Section 47 (1) of the Act.
  - (2) Written request for hearing and document for withdrawing the request,
  - (3) Written motion for objection pursuant to the provision of Section 35 (1) of the Act,
  - (4) Written motion for objection pursuant to the provision of Section 75 of the Act,
  - (5) Documents proving authorization or the authority of the representative necessary for the hearing and other documents proving important matters for the hearing.
2. When a document is submitted using facsimile, the document shall be deemed to have been submitted to the Commission or the hearing examiner when the Commission receives it.
3. The Commission or the hearing examiner may, when he or she deems necessary in the case mentioned in the preceding subsection, have the person who submitted the document submit the original document used for transmission.

### **Section 8 [Submission of Information written in Document Submitted to the Hearing Examiner by Electromagnetic Devices]**

The hearing examiner may, when he or she deems it necessary, and the investigator, the respondent or the respondent's representative has the Electromagnetic Files (the term "Electromagnetic File" shall mean a record prepared by means of an electronic method, a magnetic method or any other method that is not perceivable by human senses and is used for information processing by computers) recorded the contents of the document which have been submitted or intended to be submitted to the hearing examiner, seek the investigator, the respondent or the respondent's representative to submit the information recorded in the Electromagnetic Files by Electromagnetic Devices (the term "Electromagnetic Devices" shall mean such device using an electronic information processing system or utilizing any other information and communications technology) determined by the hearing examiner.

## **Chapter II Initiation of Hearing Procedure**

### **Section 9 [Written Request for Hearing]**

The hearing requests pursuant to the provisions of Section 49(6) or Section 50(4) of the Act shall be submitted to the Commission by a written request for hearing stipulated

in the provisions of Section 52(1) of the Act.

2. The written request for hearing pursuant to the provisions of Section 52 (1) of the Act shall be made in Form No.1, and include the claim on the reason for the hearing request as concretely as possible, and shall contain the important facts related to the claim and the evidences for each matters to prove.

3 The Commission may, when it deems that the hearing request does not follow the provisions of Section 52 (1) and (2) of the Act. and can be revised , seek to correct it, with a considerable period of time. In this case, the Commission may correct them on its own authority if the defects are minor.

### **Section 10 [Withdrawal of Hearing Request]**

Withdrawal of hearing request pursuant to the provision of Section 52 (4) of the Act shall be made in Form No.2.

### **Section 11 [Initiation of Hearing]**

A notification of hearing procedure pursuant to the provision of Section 55 (1) of the Act shall include following matters.

- (1) Indication of original administrative measures
- (2) A Number of the case
- (3) That the respondent or the respondent' s representative is requested to appear on the date of the hearing.

## **Chapter III Designation of Hearing Examiner, Persons in Hearings**

### **Section 12 [Designation of the Hearing Examiners]**

The Commission shall, when having opened a hearing it had decided to designate hearing examiners for each case and entrust them to conduct all or part of the hearing procedures for the concerned case pursuant to the provision of Section 56 (1) of the Act, inform the respondent or the respondent's representative of the name of the hearing examiner.

2. When the scope and extent of the hearing procedure to be carried out by the hearing examiner is limited in the case of preceding subsection, the Commission shall report the name of the hearing examiner mentioned in the preceding subsection as well as the scope and extent of the hearing procedure to be carried out by the hearing examiner to the respondent or the respondent's representative.

3. When more than one hearing examiner is carrying out the hearing procedure in the

case of Subsection 1, the Commission shall nominate one of the hearing examiners as a person who shall supervise the affairs related to the hearing procedures, and inform the respondent or the respondent's representative of thereof.

4. In the case of preceding subsection, unless otherwise provided for in this Rules, the measures which is made by hearing examiner of the hearing procedure in the said case is issued by the committee consisting of the hearing examiners. In this case, resolutions of the committee consisting of the hearing examiners shall be carried by a majority.

### **Section 13 [Hearing Examiner's Power]**

Hearing examiners shall exercise the power vested with the Commission with respect to hearings pursuant to the provision of Section 56 of the Act and this Regulation.

2. Hearing examiners shall execute their duties fairly, expeditiously, and independently.

### **Section 14 [Officials]**

The Commission shall have its officials perform tasks related to hearings.

2. The officials mentioned in the preceding subsection (hereinafter referred to as "Officials") shall perform such tasks as the preparation, custody, service and delivery of records or other documents and as notification under the provisions of this regulation at hearings pursuant to the instructions of the person who was nominated as a person who shall supervise the affairs related to the hearing procedures under the Section 12 (3) (In the case the designated hearing examiner under the provision of Section 56 (1) of the Act is one, the hearing examiner carry out, hereinafter referred to as "chief hearing examiner").

### **Section 15 [Representative]**

The powers of a representative who is an attorney or a corporation of attorneys shall be verified in writing.

2. The name of a bar association to which the representative belongs, and the address of his office, shall be given in the statement mentioned in the preceding subsection, and the scope and extent of his authority shall be clearly indicated thereon.
3. When the representative is a corporation of attorneys, the name of the attorney who is in charge of the case in question as a member of the corporation, the name of the bar association to which the attorney belongs, and the scope and extent of tasks (work) that each attorney can perform shall be stated clearly in the document mentioned in Subsection 1.

4. The respondent shall, when intending to obtain approval for the appointment of a person other than an attorney or a corporation of attorneys as the respondent's representative, submit to the hearing examiner a statement in which the name, address and occupation of said person, and the person's relationship with the respondent, and such other matters sufficient for determining whether or not said person is eligible to act as representative are stated.
5. Document that clearly shows the authority and scope of authority of the representative shall be attached to the statement mentioned in the preceding subsection.
6. In the case that the statement mentioned in the subsection (4) is submitted, when the hearing examiner decided to approve or disapprove the applied person as the respondent's representative, the hearing examiner shall inform the respondent and the investigator thereof.
7. The respondent shall, if the representative's authority had been expired, notify the hearing examiner thereof in writing without delay.

#### **Section 16 [Intervention]**

The Commission may, when it interrogates a respondent or a third party pursuant to the provision of the proviso to Section 70 - 3 of the Act, do so in writing.

2. The Commission may have the hearing examiner conduct questioning as mentioned in the preceding subsection. In this case, the hearing examiner who conducts questioning shall submit a report on the results of the questioning to the Commission.
3. The Commission shall, where it rules out permission for a third party to intervene as a party, notify the respondent and the third party (hereinafter referred to as "Intervenor") to that effect.

#### **Section 17 [Acts of Intervenor]**

Intervenors may make factual and legal statements at hearings, or call for evidence, or perform other necessary acts.

#### **Section 18 [Realization of Proper and Prompt Hearing]**

The hearing examiner shall, set a target aiming to terminate a hearing procedure within two years as prompt as possible, and make efforts toward achieving this target by operating fulfilling procedures,.

- 2 The hearing examiner, the investigator and the respondent or the respondent's representative shall attempt to carry out systematically hearing procedures for

realization of proper and prompt hearings.

## **Chapter IV Date of Hearing and Preparation**

### **Section 19 [Designation of Hearing Date]**

The hearing dates shall be designated by the hearing examiner.

2. Notice of a hearing date served to the investigator and the respondent or the respondent's representative shall include notifications of the date and venue to appear, and other necessary matters; provided, however, that such notice may be made orally to those attending or appearing on the hearing date
3. The hearing examiner may, when deemed necessary, change the hearing date.
4. The hearing examiner shall, when he or she has changed the hearing date, notice the effect to the investigator, the respondent and the respondent's representative immediately.

### **Section 20 [Hearing court]**

Hearings shall be held at the Commission's hearing court. However, the hearing examiner may, as deemed necessary, designate a suitable venue for hearings in that date.

2. The hearing examiner shall, when designate a suitable venue for hearings of a given case in the hearing date pursuant to the provision of the proviso to preceding subsection, forthwith notify the investigator and the respondent or the respondent's representative thereof.

### **Section 21 [Attendance at Hearings]**

Hearings on a fixed hearing date shall be held in the presence of the hearing examiner, Officials and investigators.

2. The respondent or the respondent's representative shall appear on the hearing date.

### **Section 22 [Notification of Non-Appearance of Respondent or Respondent's Representative]**

If unable to appear on the hearing date, the respondent or the respondent's representative shall notify the hearing examiner thereof without delay, together with a clear reason.

### **Section 23 [Application for Closed Hearing]**

Application for a closed hearing shall be made by clearly stating the scope and extent of closed hearing, the grounds for the closed hearing and the period.

2. The hearing examiner shall, when the hearing is held behind closed [locked] doors, make a statement to that effect and provide grounds.

#### **Section 24 [Opening Procedure]**

The respondent or the respondent's representative shall state the purpose and reason for the hearing request mentioned in the written request for hearing at the opening of the hearing procedure.

2. The investigator shall, following the statement of the respondent or the respondent's representative pursuant to the preceding subsection, make a claim about contains of the original administrative measures, the facts that led to the original administrative measures, the application of law thereto, and the suitability of the original administrative measures in accordance with a preliminary pleading (the document which mentions the matter intended to be stated in the date of hearing).
3. The certified copy of the cease and desist order or the surcharge payment order related to the hearing request shall be attached to the preliminary pleading mentioned in the preceding subsection.

#### **Section 25 [Fiction of statement]**

When neither the respondent nor the respondent's representative fails to appear on the hearing date, hearing examiner may interpret that the matter written in the hearing request or the preparation document submitted by the respondent or the respondent's representative is stated in the hearing date.

#### **Section 26 [Examination of Evidence]**

Hearing Examiner may conduct the examination of evidence upon its own motion or upon application.

2. The examination of evidence shall be commenced in accordance with the procedure prescribed in the next chapter.
3. The examination of evidence shall be conducted on the hearing date unless otherwise provided for in this Rules.

#### **Section 27 [Last Disclosure of Opinion ]**

Upon completion of the examination of evidence, the investigator may state his opinion about facts that led to the original administrative measures, the application of law



thereto, and the suitability of the original administrative measures.

2. The respondent or the respondent's representative shall be given an opportunity to state opinions at the end.
3. When the respondent or the respondent's representative fails to appear without due cause on the date mentioned in the preceding subsection, the hearing procedure may be completed without giving another opportunity to the respondent or the respondent's representative to state opinions.

### **Section 28 [Change Claim by Investigator]**

The investigator may change the claim on the fact that led to the original administrative measures and the application of law thereto pursuant to the provision of Section 58(2) of the Act within the scope and extent not to be lost the identity of the case.

- 2 The investigator may not do the change, when the change mentioned in the proceeding subsection bring remarkable delay in the hearing procedure.
- 3 The hearing examiner shall, when the investigator did the change mentioned in the subsection 1, consider not to cause substantial disadvantages for respondent's method for defense by the change.
- 4 The hearing examiner shall, when he or she does not approve the change mentioned in subsection 1, by investigator, clarify thereof and the reason on the hearing date.

### **Section 29 [Maintenance of Order ]**

The chief hearing examiner may command any matter necessary or take measures for the maintenance of order in the hearing court.

### **Section 30 [Limitations of Argument]**

The chief hearing examiner may reject any question or statement by the investigator, the respondent or the respondent's representative, when the said question or statement merely constitutes repetition of earlier questions or statements, or is irrelevant to the matter of the case, or the chief hearing examiner deems it particularly necessary.

### **Section 31 [Explanation and Questions]**

The chief hearing examiner may question the investigator, the respondent or the respondent's representative or urge them to testify on any factual and legal matter to clarify the case on the hearing date or on dates other than the hearing date.

2. Hearing examiners other than the chief hearing examiner may take the measures

mentioned in the preceding subsection by notifying the chief hearing examiner thereof.

3. The investigator, the respondent, the respondent's representative may, when he or she is unable to understand a statement made by the other party, ask the chief hearing examiner to put a question to the other party, or directly question the other party with the consent of the chief hearing examiner on the hearing date or dates other than the hearing date.
4. The chief hearing examiner or the hearing examiner other than the chief hearing examiner shall, when he or she took measures pursuant to the provision of Subsection 1 or 2 for a matter that may cause a major change in the method for prosecution or defense on dates other than the hearing date, notify the other party of the details thereof.

#### **Section 32 [Consolidation and Separation of Hearing]**

The hearing examiner shall, when consolidate or separate hearings, inform the investigator and the respondent or the respondent's representative thereof pursuant to the provision of Section 64 of the Act.

2. The consolidation of hearings may be implemented even before the first hearing date.

#### **Section 33 [Termination and Reopening of Hearing]**

The hearing examiner may, when deemed appropriate, terminate hearings, or reopen hearings that have been terminated, upon its own motion or upon application.

2. The hearing examiner shall, when reopen hearings pursuant to the provision of the preceding subsection, inform the investigator and the respondent or the respondent's representative thereof.

#### **Section 34 [Motion for Objection to the Hearing Examiner]**

The investigator, or the respondent or the respondent's representative may, if he or she is dissatisfied with measures (excluding measures mentioned in each item of Section 47 (1) of the Act that was taken by the hearing examiner pursuant to the provision of Section 56 (1) of the Act) relating to the hearing taken by the hearing examiner, make a motion for objection to the Committee consists of hearing examiners without delay (In the case the designated hearing examiner under the provision of section 56 (1) of the Act is one, the hearing examiner carries out: the same shall apply hereinafter in this section.) .

- 2 The Committee consists of hearing examiners in the preceding subsection shall, when

deemed the motion for objection reasonable, withdraw, cancel, or change the measures against which the motion for objection was made.

3 The Committee consists of hearing examiners in the preceding subsection 1 shall clarify the reason, in case the committee have rejected the motion for objection.

### **Section 35 [Motion for Objection to the Commission ]**

A person subject to one of the measures mentioned in the items of Section 47(1) of the Act that was taken by the hearing examiners pursuant to of Section 56(1) of the Act, if he or she is dissatisfied with the measures make a motion for objection to the Commission in writing the grounds for the motion, within one week of the date of being subject to the measure

2 The Commission shall, if it recognizes that there are the grounds for the motion for objection, order the hearing examiner to withdraw, cancel, or change the action against which the motion for objection was made, and notify the petitioner thereof.

3 The Commission shall, if it has rejected a motion for objection, give notice to the petitioner to that effect. In the case, the reasons for the rejection shall be given.

### **Section 36 [Preparatory Pleading]**

Claims on the hearing date shall be prepared by preparatory pleadings.

2 The Preparatory pleadings shall be submitted to the hearing examiner, with an appropriate period necessary for other party to prepare for the matters mentioned in the preparatory pleadings.

### **Section 37[Period of Submission of Preparatory Pleading etc]**

The chief hearing examiner may fix the period to submit preparatory pleadings or to apply for evidences.

### **Section 38[Preparatory Proceedings]**

The hearing examiner may, if deemed appropriate, carry out preparatory proceedings by requesting the attendance of the investigator and the respondent or the respondent's representative, to arrange points of dispute and evidence. In this case, he or she may, if deemed necessary, have the investigator, the respondent or the respondent's representative submit the preparatory pleadings or other documents to substitute for or supplement the above method.

2 The hearing examiner may conduct examination of documents (including other materials as mentioned in Section50) in the date of Preparatory Proceedings

- 3 The hearing examiner may permit the person who is recognized as appropriate to hear the Preparatory Proceedings on the date. However the hearing examiner shall permit the person who have been applied by the respondent or the respondent's representative to hear the proceedings, except that the hearing examiner deems the fear of impediment to the proceedings exists .
- 4 The hearing examiner may, when the respondent or the respondent's representative lives in a distant place or he or she finds it proper, conduct the proceedings on the date of Preparatory Proceedings by means which enable the hearing examiner, the investigator and the respondent or the respondent's representative to communicate simultaneously by transmission and reception of voice. In this case, the respondent or the respondent's representative who participated in the Preparatory Proceedings without appearing on the date shall be deemed to attend the date.
- 5 The hearing examiner shall, when the Preparatory Proceedings is conducted by means which enable the hearing examiner, the investigator and the respondent or the respondent's representative to communicate simultaneously by transmission and reception of voice pursuant to the provisions of the preceding subsection, confirm the people who speak and the places for a call.
- 6 The investigator and the respondent or the respondent's representative shall state the result of the preparatory proceeding at the hearing date.

## **Chapter V Evidence**

### **Division I Application for Evidence, Ruling on Examination of Evidence.**

#### **Section 39 [Order of Application for Evidence]**

The investigator shall apply for evidence deemed necessary for hearing the case at the start of the examination of the evidence.

2. The respondent or the respondent's representative may apply for evidence that is deemed necessary for hearing the case after the application mentioned in the preceding subsection.

#### **Section 40 [Written Application for Evidence]**

Application for evidence shall be made by stating in writing the evidence and the matters the evidence is intended to prove.

#### **Section 41 [Application for the Interrogation of Witnesses]**

An application for the interrogation of witnesses shall be made by clearly stating the name, address and occupation of the witnesses, the matters to be covered in the interrogation and the need for the interrogation.

2. An application for interrogation of the respondent himself or herself shall be made by clearly stating the name, address, the matters to be covered in the interrogation and the need for the interrogation.

#### **Section 42 [Application for Inspection]**

An application for examination of evidence by means of an inspection shall be made by stating the purpose and necessity thereof.

#### **Section 43 [Application for Expert Proof]**

An application for expert proof shall be made by clearly stating the matters about which an expert will be testifying and the need for the expert proof.

#### **Section 44 [Expert Testimony]**

The chief hearing examiner shall, when he or she has instructed an expert to provide expert testimony in accordance with provision of Section 47 (1) (ii) of the Act pursuant to the provision of Section 56 (1) of the Act, have him or her report the process and result thereof by a written statement.

#### **Section 45 [Application for the Examination of Documents]**

An application for the examination of documents shall be made by submitting the relevant documents, or by applying for submitting from the person in possession of the documents.

2. An application for the examination of documents through the submission of the documents shall be made by clearly stating the title of the documents and the purpose of proof, except where these are clearly stated in the documents.

3. A submission of documents may, if approval has been obtained from the chief hearing examiner, be achieved by means of copies of the documents in lieu of the originals.

#### **Section 46 [Application for Order for Submission of Documents and Other Materials]**

An application for the order for the submission of documents and other materials shall be made by the document clearly stating the following information.

- (1) The representation of the documents and other materials,
- (2) The purpose of the documents,

- (3) The party in possession of the documents and other materials,
  - (4) The facts to be proved, and
  - (5) the reason and necessity for the application
- 2 The hearing examiner shall, if he or she recognizes that there are ground for the application, order the possessor to submit the documents and other materials (hereinafter referred to as “document, etc.” in this section) .
- 3 The hearing examiner may, when deemed necessary, retain the submitted document, etc.

#### **Section 47 [Return, or Temporary Return, of Retained Materials]**

Any retained material that is deemed to be unnecessary shall be returned without waiting for the closure of the case.

- 2 Any retained material may be temporarily returned upon the request of its owner or the person who provided it.

#### **Section 48 [Documents Submitted Voluntarily]**

The hearing examiner shall, when he or she deemed necessary when receiving documents and other materials provided voluntarily, request the provider of the documents to submit a document indicating the party in possession, holder of the submitted materials, the name, occupation and address of the party providing the materials, the kind of the submitted materials, and the date of provision.

#### **Section 49 [Attachment of Translations]**

In the case a document written in foreign language is submitted for application for the examination of documents, the applicant shall attach a translation of a part of the document for examination.

#### **Section 50 [Apply Mutatis Mutandis for other Materials]**

The provisions concerning documents shall be applied mutatis mutandis to drawings, pictures, recordings, videocassette tapes and other materials except documents to represent the information.

#### **Section 51 [Ruling on Examination of Evidence]**

When an application for evidence has been made, the investigator and the respondent or the respondent's representative may state their own opinion about the acceptance or rejection of the evidence

- 2 The hearing examiner may not accept evidence that was applied by the investigator and the respondent or the respondent's representative, when deemed unnecessary. In this case, the reason for rejecting the evidence shall be indicated.
- 3 The hearing examiner may, when an examination of the evidence poses an obstacle of indefinite duration, forgo the examination.

## **Division II Interrogation**

### **Section 52 [Timing for Submission of Documents and Other Materials used for Interrogation]**

Documents to be used in the questioning of witnesses, experts and the respondent, excluding documents used as evidence to argue the reliability of the statement of witnesses, experts and the respondent, shall be submitted well in advance of the start date for questioning witnesses, experts and the respondent. However, when it is not possible to submit the originals of the documents, a copy of the documents may be submitted.

### **Section 53 [Subpoenas]**

Subpoenas issued to witnesses shall include the following information, and shall be served under the signature and seal of the chief hearing examiner.

- (1) Date, time and place that the witness is to appear,
  - (2) A Number of the case
  - (3) Matters to be covered in the interrogation,
  - (4) Legal penalty for a failure to appear, and
  - (5) Any other pertinent matters.
2. The provision of the preceding subsection shall be applied mutatis mutandis to subpoenas issued to experts or to the respondent himself or herself.
  3. If a witness, expert or the respondent himself or herself is in court during the hearing, he or she may, notwithstanding the preceding two subsections, be immediately interrogated, or be caused to give expert witness.

### **Section 54 [Separate Interrogation]**

A witness, expert, or the respondent himself or herself shall be interrogated separately.

2. The chief hearing examiner, if other witnesses or experts who are to be subsequently interrogated are in court during the hearing, shall instruct them to leave the room. However, this shall not apply if it is deemed necessary for the witnesses or experts to

remain.

### **Section 55 [Identification]**

The chief hearing examiner shall first check the identification of witnesses, experts and the respondent himself or herself.

### **Section 56 [Oath]**

An oath shall be taken prior to interrogation.

2. The oath shall be in the form of a statement.
3. The oath for witnesses shall be such a statement that he or she hereby swears to tell the truth, the whole truth and nothing but the truth.
4. The oath for experts shall be such a statement that he or she hereby swears to provide expert testimony in a conscientious and faithful manner.
5. The chief hearing examiner shall cause a witness or expert to read the oath aloud, and to sign and seal it.
6. When a witness or expert cannot sign an oath as mentioned in the preceding subsection, another person shall sign on behalf of the witness or expert. When a witness or expert cannot seal an oath, he or she shall be fingerprinted. However, where another person signs an oath on behalf of a witness or expert, the person shall state the reason in the oath and sign and seal it.
7. The oath shall be administered solemnly, with everybody in the court standing.
8. Notwithstanding the provisions of the three preceding subsections, the oath by the expert may be administered by a submission of a written oath to the hearing examiner. In this case, an explanation of the purpose of the oath and a notification of the punishment in false proof by the chief hearing examiner are conducted by sending a document which contains these items, to the expert.

### **Section 57 [Warning]**

The chief hearing examiner shall notify a witness or expert who has taken an oath prior to interrogation that a false statement or expert testimony shall be punished pursuant to the provisions of Section 92-2 of the Act, and that the refusal to provide a statement or expert testimony without justifiable reason shall be punished pursuant to the provisions of Section 94 of the Act.

### **Section 58 [Interpreter]**

When a person not versed in the Japanese language make a statement, an interpreter



shall interpret his or her statement into Japanese.

2 In the case of the preceding subsection, the interpreter shall make an oath. In this case, the provisions of Section 56 (except Subsection 3 and 8) shall be applied *mutatis mutandis* to the oath of the interpreter.

### **Section 59 [Procedure for Interrogating Witnesses]**

The investigator and the respondent or the respondent's representative may, upon notifying the chief hearing examiner, interrogate witnesses, experts and the respondent himself or herself. In this case, when the questioning of witnesses, experts or the respondent himself or herself has commenced subject to a request made by the investigator or the respondent or the respondent's representative, the person who made the request shall first interrogate them.

2. The hearing examiner may interrogate the witnesses, experts or the respondent himself after the completion of the interrogation as mentioned in the preceding subsection.
3. The chief hearing examiner may, when deemed appropriate, change the order of interrogation as mentioned in the preceding two subsections, after listening to the opinions of the investigator and the respondent or the respondent's representative.
4. The chief hearing examiner may at any time, when deemed necessary, interrogate the witnesses, experts or the respondent himself in addition to the interrogation pursuant to Subsection 2.
5. The hearing examiner other than the chief hearing examiner may, upon notifying the chief hearing examiner, interrogate the witnesses, experts or the respondent himself.
6. Witness and experts may not make statements based on documents unless they have the approval of the chief hearing examiner.

### **Section 60 [Restrictions on Questions]**

Questions shall be asked in a particular and specific manner as possible.

2. The investigator and the respondent or the respondent's representative shall not ask the following questions. However, this restriction shall not apply to the questions mentioned in Items 2 to 5 if there is a justifiable reason.
  - (1) Questions to insult or embarrass witnesses, experts or the respondent,
  - (2) Leading questions,
  - (3) Questions that are same as a question that has already been asked,
  - (4) Questions irrelevant to the points of dispute, and
  - (5) questions requesting the statement of an opinion

3. The chief hearing examiner may, when a question conflicts with the provisions of the preceding subsection, limit the question on its own motion or on application.

#### **Section 61 [Confrontation]**

The chief hearing examiner may, when he or she deems necessary, instruct the witness, the expert, and respondent to confront mutually.

#### **Section 62 [Expert Witness]**

The provision of the interrogation of the witness shall apply to the interrogation of the expert witness.

#### **Section 63 [Interrogation by Transmission and Reception of Pictures and Voice]**

In the case of a interrogation of a witnesses, a experts or a respondent, when the witnesses, the experts or the respondent lives in distant place, or if the hearing examiner finds it proper, the interrogation may be conducted by means which enable persons at a distance to communicate, being able to mutually recognize the state of the other by transmission and reception of pictures and voice.

2. In the case of the interrogation of witnesses or experts pursuant to the provision of the preceding subsection, the interrogation may be conducted, listening to the opinions of the investigator and the respondent or the respondent's representative, by means which have the respondent or the respondent's representative appear in the hearing court, and have witnesses or experts appear to the local office of Fair Trade Commission where the device necessary to the interrogation was established.

- 3 In the case of the interrogation of respondent pursuant to the provision of Subsection 1, the interrogation may be conducted, listening to the opinions of the investigator, the respondent or the respondent's representative, by means which have the respondent appear in the local office of Fair Trade Commission where the device necessary to the interrogation was established.

- 4 Facsimile may be used for the presentation of a copy of documents or other procedures necessary for interrogation.

- 5 When the interrogation pursuant to the provision of Subsection 1 of the preceding section have been conducted, the record shall be stated that effect, the local office of the Fair Trade Commission where the witness, the experts or the respondent have appeared.

### **Section 64 [Examination of Evidence except Hearing Date]**

The hearing examiner may, when deemed necessary, conduct the examination of evidence except for hearing date. In this case, the hearing examiner shall afford the investigator and the respondent or the respondent's representative an opportunity to observe the examination of evidence.

2 The chief hearing examiner may, when deemed necessary, have a hearing examiner who is not a chief hearing examiner conduct the examination of evidence pursuant to the provision of Subsection 1. In this case, the chief hearing examiner shall notify the investigator and the respondent or the respondent's representative, of the name of the hearing examiner who conducts the examination of evidence..

## **Chapter VI Protocol for Hearings**

### **Section 65 [Protocol for Hearings]**

Officials shall prepare a record for every hearing date. This record shall include the following information, and shall be signed and sealed by officials. The record shall bear the seal of the hearing examiner as confirmation.

- (1) Date of the hearing and place,
- (2) Name and official title of the hearing examiner, officials, the investigator who attended the hearings and name of the respondent or the respondent's representative, the stenographer and the interpreter attending the hearings,
- (3) If the respondent or the respondent's representative does not appear, a statement to that effect and the reason thereof,
- (4) If the hearing is closed to the public, a statement to that effect and the reason thereof,
- (5) The name of witnesses and experts interrogated, and if they did not take an oath, a statement to that effect, and the reason thereof,
- (6) Application for examination of evidence or other applications,
- (7) A summary of statements made by the investigator or the respondent or the respondent's representative on facts and law, as well as a summary of statements and the interrogation of witnesses, experts or the respondent (or a reference to stenographic records or documents as a substitute for the summaries),
- (8) The title of the documents and other materials examined,
- (9) Rulings of the hearing examiner, and other matters, and,
- (10) Matters ordered for inclusion by the chief hearing examiner.

- 2 Officials may, when the chief hearing examiner has permitted, record a witness's, an expert's or the respondent's statement on a tape or videocassette tape (including articles on which certain matters can be recorded by corresponding methods) as substitute for a record. .
- 3 The investigator or the respondent or the respondent's representative may motion for objection concerning the accuracy of the record. When the objection is motioned, Officials shall record that effect.
- 4 The hearing examiner shall, when he or she deems the objection pursuant to the preceding subsection reasonable, order a change of the matters related with the objection in the record, and notify the investigator and the respondent or the respondent's representative, of that effect.

#### **Section 66 [Record of Retention]**

The hearing examiner shall, when he or she has retained any material provided in accordance with the provision of Section 47(1) (iii) of the Act pursuant to the provision of Section 56 (1) of the Act, prepare a record for such retention. In this case, the hearing examiner may have Officials prepare it.

- 2 The record mentioned in the preceding subsection shall incorporate the number of the case, the name, occupation and address of the owner of the retained materials and the person who provided the retained materials, and the date and place of retention, and, the record shall be signed and sealed by the hearing examiner or Officials, and which shall be confirmed with the seal of the hearing examiner.
3. A list showing the nature of the retained materials shall be attached to the record mentioned in Subsection 1.
4. A copy of the list shall be made available upon the request of the owner of the retained materials or a person who provided the retained materials.

#### **Section 67 [Record of Examination of Evidence except Hearing Date]**

Officials shall, when the examination of evidence except hearing date pursuant to the provision of Section 64 is conducted, prepare a record. The results of examination of evidence and other necessary matters shall be stated in the record which shall be signed and sealed by the officials in charge of the hearing administration, and which shall be confirmed with the seal of the hearing examiner.

2. The record mentioned in the preceding subsection shall be presented on hearing date.
- 3 The provisions of Section 65(2)-(4) shall apply mutatis mutandis to the record mentioned in Subsection 1.

### **Section 68 [Record of Preparatory Proceeding]**

When preparatory proceedings were carried out, Officials shall prepare a record. The results of proceedings and other necessary matters of each date shall be stated in the record which shall be signed and sealed by the officials in charge of the hearing administration, and which shall be confirmed with the seal of the hearing examiner.

2 Officials shall, when the procedure mentioned in Section 38(4) was done, mention that effect and the linked telephone number in the record. In this case, Officials may record the linked place in addition to the linked number.

3 The provisions of Section 65 (3)(4) shall apply mutatis mutandis to the record mentioned in Subsection 1.

### **Section 69 [Citations in the Protocol]**

In the record mentioned from Sections 65 through the preceding section, a reference to documents, photographs and other materials as deemed proper by the chief hearing examiner may be made a part of the record as an attachment thereto.

### **Section 70 [Stenographic Records]**

The chief hearing examiner may, when deemed necessary, have stenographer attend the hearing date to stenograph a statement.

2 The stenographer attending the hearings shall prepare a stenographic record, and shall submit it to the hearing examiner after signing and sealing the record..

3 The hearing examiner shall confirm the stenographic record mentioned in the preceding subsection and affix his seal.

## **Chapter VII Hearing Procedure by the Commission**

### **Section 71 [Hearing Procedure by the Commission]**

When the Commission conducts hearings, the Commission may not do without the presence of the chairman and two or more commissioners.

2 With respect the application of the provision of the preceding subsection, when the chairman is unable to fulfill his function, a person who shall represent the chairman as stipulated in Section 33 (2) of the Act shall be deemed the chairman.

### **Section 72 [Apply Mutatis Mutandis of The Provisions of Hearing Procedure by the Hearing Examiner]**

The provisions of hearing procedure by the hearing examiner (excluding the provision concerning preliminary decision) shall apply mutatis mutandis to the hearing procedures by the Commission..

## **Chapter VIII Decision**

### **Section 73 [Preliminary Decision]**

The hearing examiner shall, after the completion of hearings, make a preliminary decision without delay. The hearing examiner shall submit it to the Commission together with the record of the case, and serve a copy of it on the investigator and the respondent or the respondent's representative.

### **Section 74 [Matters Stated in Preliminary Decision]**

The hearing examiner shall, when he or she considers it reasonable to make a decision pursuant to the provisions of the Section 66 of the Act, state a content of the order, facts, evidences, and application of laws and ordinances (and basis of calculation of the surcharge, when it is considered reasonable to make a decision mentioned in Section 66(3) of the Act concerned the order for payment) in preliminary decision. However when he or she renders the decision pursuant to the provision of the Section 66(1), he or she may not state evidences.

2. The hearing examiner shall sign and seal the preliminary decision.
3. When a hearing examiner is unable to sign and seal the preliminary decision due to a problem, another hearing examiner shall sign and seal the preliminary decision by noting the reason thereof.

### **Section 75 [Motion for Objection against the Preliminary Decision]**

The investigator or the respondent or the respondent's representative may make a motion for objection to the Commission in writing within two weeks of the date of receiving a copy of the preliminary decision.

### **Section 76 [Proposed Statement]**

The respondent or the respondent's representative shall, if he or she intends to make a proposal of statement in accordance with the provisions of Section 63 of the Act, submit to the Commission a document stating the intent and a summary of the statement within the period mentioned in the preceding section.

2. If the proposal of statement pursuant to the preceding subsection has been made, the

Commission shall, without delay following the expiry of the period mentioned in the preceding subsection, designate a date for hearing the statement. The Commission shall also serve a written notice to the respondent or the respondent's representative that indicates the date, time, place and other necessary information.

#### **Section 77 [Holding a Hearing of the Statement]**

If unable to appear on the date for the hearing of the statement, the respondent or the respondent's representative shall notify the chairman thereof without delay, together with a clear reason.

2 The chairman may, who deemed necessary, change the date for the hearing of the statement .

3 The chairman presides the hearing of the statement on the date for the hearing of the statement.

4 The respondent or the respondent's representative shall, at the hearing of the statement, make a statement based on the document submitted pursuant to the provision of Subsection 1 of the preceding section.

5. For the hearing of statement, the officials shall prepare a record stating a summary of the stated opinion and other necessary matters and sign and seal. The chairman shall seal the summary.

6. When the respondent or the respondent's representative fails to appear on the date for the hearing of the statement without due reason, the proposal for the statement shall be deemed to be withdrawn.

7. The provisions of Section 71 shall be applied to the hearing of the statement.

#### **Section 78 [Decision Based on Preliminary Decision]**

After the period mentioned in Section 75 has expired (and after an opportunity is provided to make a statement if a proposal of statement was made in accordance with the provisions of Section 63 of the Act), the Commission may forthwith render a decision having the same content as that of the preliminary decision, if the preliminary decision is deemed appropriate. The decision may be rendered after examining the preliminary decision on the basis of the record of the case submitted in accordance with the provisions of Section 73, the written motion for objection submitted in accordance with the provisions of Section 75 and the hearing of statement made in accordance with the provision of the preceding section

2. As a result of the examination mentioned in the preceding subsection, the Commission may, if it deems that the objection or the statement is supported by

reason, or otherwise deems necessary, render a decision that differs from the preliminary decision. Alternatively, the Commission may hold hearings by itself in respect to the case, or may order the hearing examiner to reopen the hearings with instructions on points needing further examination.

#### **Section 79 [Reopening of Hearings]**

The Commission shall, when it has ruled that it will hold the hearings by itself or that it will order the hearing examiner to reopen the hearings in accordance with the provision of Subsection 2 of the preceding section, prepare a written ruling and serve its copy on the respondent or the respondent's representative.

#### **Section 80 [Decisions]**

If a decision is rendered pursuant to the provisions of Section 66 of the Act, the text of the order and the evidence shall be stated in the decision, in addition to the matters provided in Section 70-2(1) of the Act, however, if a decision is rendered pursuant to the provision of Section 66 (1) of the act, the evidence may not be stated (in the decision).

2. A certified copy of the decision shall be served on the respondent or the respondent's representative.

#### **Section 81 [Decision relating to corrections]**

When there is a clear error, including a transcript error, in the decision, the Commission may make a decision to correct the error upon its own motion or upon application.

2. A motion for an objection against the decision for correction may be made in writing to the Commission within two weeks of the date a certified copy of the decision was served.

3 The Commission shall, if it turns down a motion for objection as mentioned in the preceding subsection, notify the applicant thereof.

#### **Section 82 [Hearings for Cases Held in Remand]**

If the case has been held in remand in accordance with the provisions of Section 81 (3) of the Act, the Commission shall forthwith set a hearing date.

2. The Commission may, when deemed appropriate, have the hearing examiner preside over hearings to be held after the case has been held in remand as mentioned in the preceding subsection above.



**【For Information】 Provision Deleted**

**Chapter V Decision**

**Division I Consent Decision**

**Section 81 [Application for Consent Decision]**

The respondent may, at any time after the decision on the initiation of the hearing, apply for a consent decision as stipulated in Section 53-3 of the Act.

2. During the hearing by the hearing examiner, the application mentioned in the preceding subsection shall be made through the hearing examiner.
3. The hearing examiner shall submit to the Commission the application mentioned in the preceding subsection together with his opinion.