

**The Fair Trade Commission's Policy on
Criminal Accusation and Compulsory Investigation of
Criminal Cases Regarding Antimonopoly Violations**

(Tentative translation)

**October 7, 2005
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.35 of 2005), the introduction of the provisions with respect to compulsory investigation of cases concerning offenses stipulated in Section 89 through 91 (hereinafter referred to as "criminal cases") of the Act Concerning the Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as "the Act") and others were reformed, and come into effect on January 4, 2006. In order to ensure appropriate enforcement of the amended Act, the Fair Trade Commission (hereinafter referred to as "FTC") will investigate and file an accusation against criminal cases in line with the following policy on and after the said date.

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 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 the following persons:

- a. The first entrepreneur that submitted reports and materials concerning the immunity from the surcharge before the investigation start date. (The entrepreneur that submits reports and materials pursuant to the provision of Section 7-2 (7) of the

Act. However, not shall apply this provision to the entrepreneur who is found to be fallen under any of the paragraphs of Section 7-2 (12) of the Act; the said reports or documents contains false information, the said entrepreneur fails to submit the reports or materials or submits false reports or materials in response to the additional requests, and the said entrepreneur coerced another entrepreneur to commit the violative act or blocked another entrepreneur from ceasing to commit of the violative act.)

b. The officer, employee, or other person of the said entrepreneur who committed the violative act of the Act and is deemed to be in a circumstance to be treated as same as the said entrepreneur, regarding the said entrepreneur'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.