Content

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Content：

Article 1

These Enforcement Rules are adopted pursuant to the provisions of Article 48 of the Fair Trade Act (hereinafter referred to as the "Law").

Article 2

The term "trade association" in Article 2, Subparagraph 3 of the Law refers to the following:

Industry associations and chambers of industry organized under the Industrial Association Law;

Commercial associations, federations of commercial associations, exporter associations, and federations of exporter associations, and chambers of commerce organized under the Commercial Association Law;

Other professional associations organized under the provisions of other laws and regulations.

Article 3

The following factors shall be taken into consideration when determining whether an enterprise constitutes a monopoly as referred to in Article 5 of the Law:

the market share of the enterprise in a particular market;

the possibility of substitution of the goods or services amidst changes in a particular market, giving regard to considerations of time and place;

the ability of the enterprise to influence prices in a particular market;

whether formidable difficulties exist to entry to a particular market by other enterprises;

import and export status of the goods or services.

Article 4

Production, sales, inventory, and import/export value (volume) data for the enterprise and the particular market shall be taken into account when calculating the market share of an enterprise.

Data necessary for the calculation of the market share may be based on that obtained upon investigation by the central competent authority or that recorded by other government agencies.

Article 5

The responsible person of a trade association may be deemed as the actor in concerted action as under Article 7 of the Law.

Article 6

"Sales amount" in Subparagraph 3, Paragraph 1, Article 11 of the Law means the total sale or operating revenue of an enterprise.

Calculation of the total sale or operating revenue referred to in the preceding paragraph may be based on data obtained through investigation by the Central Competent Authority or recorded by other government agencies.

Article 7

A report of a merger of enterprises under Article 11, Paragraph 1 of the Law shall be filed with the Competent Central Authority by the following enterprises:

the enterprises in the merger, where an enterprise is merged into another, assigned by or leases from another enterprise(s) of the operations or assets of another, regularly runs operation jointly with another, or is commissioned by another enterprise to run operation;

the holding or acquiring enterprise, where an enterprise holds or acquires shares or capital contribution of another enterprise; and

the controlling enterprise, where an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.

If an enterprise required to file a report has not yet been established, the existing enterprises in the merger shall file the report(s).

Article 8

A report of a merger of enterprises under Paragraph 1, Article 11 of the Law shall be filed with the Central Competent Authority with the following documents attached:

a report form specifying the following information:

(1) type and substance of the merger;

(2) the name and the place of office of each participating enterprise, or the name and the place of the office or business of each participating company, sole proprietorship, partnership, or association ;

(3) the scheduled date of merger;

(4) the name of the attorney-in-fact, if any, and the supporting document therefor,

(5) other required information;

basic data on each participating enterprise:

(1) the name and residence or domicile of the responsible person or administrator, if any, of each enterprise;

(2) the capital and business items of each participating enterprise;

(3) the turnover in the preceding fiscal year of each participating enterprise and any enterprise with which it has a relationship of control or subordination;

(4) the number of employees of each participating enterprise.

(5) Certificates of incorporation or establishment of each participating enterprise.

the financial statement and operating report for the preceding fiscal year of each participating enterprise;

data such as the production or operating costs, sales prices, and production and sales values (volumes) of the participating enterprises' goods or services related to the combination applied for;

an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition;

major future operating plans of the participating enterprises;

overview of the long-term investments by the participating enterprises in other enterprises;

if a participating enterprise's stock is listed on the stock exchange or traded on over-the-counter markets, the most recent prospectus or annual report;

information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;

other documents as specified by the Central Competent Authority.

The form of the report referred to in the preceding paragraph shall be prescribed by the Central Competent Authority.

Article 9

Where the materials submitted with the merger report pursuant to Paragraph 1, Article 11 fail to comply with the requirements of the preceding article or are deficient in content, the Central Competent Authority may issue notice to require supplementation or correction within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within the specified time period or is so made but the submitted materials remain deficient, the filing will not be accepted.

Article 10

The term "financial enterprises" as used in Article 11, Paragraph 2 of the Law refers to financial institutions under Article 4 of the Financial Institution Merger Law and financial holding companies under Article 4 of the Financial Holding Company Law.

Article 11

The date accepting the complete filing of report materials referred to in Paragraph 3, Article 11 of the Law means the filing date on which the report materials filed with the Central Competent Authority are in conformity with Article 8 and the contents thereof are also complete.

Article 12

The Central Competent Authority may publish in the government gazette its decisions made on the filings of mergers pursuant to Article 11, Paragraph 4 of the Law.

Article 13

An application for approval of concerted action filed pursuant to the proviso of Article 14, Paragraph 1 of the Law shall be jointly filed with the Central Competent Authority by all the enterprises participating in such action.

An application for approval of concerted action by a trade association as referred to in Article 7, Paragraph 4 of the Law shall be filed with the Central Competent Authority by the trade association.

The applications in the preceding two paragraphs may be made through an agent.

Article 14

An application for approval pursuant to the proviso of Article 14, Paragraph 1 of the Law shall be accompanied by the following documents:

an application form that sets forth the following:

(1) the names of the goods or services to which the concerted action applies;

(2) the type of concerted action;

(3) the implementation period and area of the concerted action;

(4) the name of the attorney-in-fact, if any, and the supporting document therefor;

(5) other required information;

the contract, agreement or other document evidencing agreement to the concerted action;

the concrete substance and implementation methods of the concerted action;

basic data on the participating enterprises:

(1) the name and residence or domicile of each participating enterprise, or the name and the location of the office or place of business of each participating company, sole proprietorship, partnership, or association;

(2) the name and residence or domicile of the representative or administrator, if any, of each enterprise; and

(3) the business items, capital, and turnover in the preceding fiscal year of each participating enterprise.

quarterly reports for the past two years on the prices and production and sales values (volumes) of those products or services relevant to the concerted action, of each participating enterprise;

financial statement and operating report of each participating enterprise for the preceding fiscal year;

information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;

an assessment report on the concerted action; and

other documents as specified by the Central Competent Authority.

The form of the application referred to in the preceding paragraph shall be set by the Central Competent Authority.

Article 15

The assessment report on the concerted action referred to in Subparagraph 8, Paragraph 1, of the preceding article shall specify the following:

1. cost structure before and after the concerted action and analytical data on forecasted changes;

2. the impact of the concerted action on enterprises not participating;

3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;

4. the impact of the concerted action on upstream and downstream enterprises and their markets;

5. concrete benefits and detrimental effects of the concerted action for the overall economy and public interest;

6. other required information.

Article 16

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 1 or 3, Paragraph 1, Article 14, of the Law shall include a concerted action assessment report that sets out in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, or rationalization of operations.

Article 17

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 2, Paragraph 1, Article 14, of the Law shall specify the following information:

the difference between the funding required for individual research and development and that required for joint research and development;

the anticipated concrete results in technology upgrading, quality improvement, cost reduction, or increased efficiency.

Article 18

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 4, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent one-year period, the percentage of the total export value (volume) of the same product for which it accounts, and the enterprise’s ratio of exports to domestic sales; and

2. the anticipated concrete efficacy in promoting exports.

Article 19

The concerted action assessment report accompanying an application filed pursuant to the provisions of Subparagraph 5, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;

2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;

3. the anticipated concrete results in strengthening trade.

Article 20

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 6, Paragraph 1, Article 14, of the Law shall specify the

following information:

a monthly comparative breakdown for the preceding three years of the average fixed costs, average variable costs, and pricing of specified goods of each participating enterprise;

a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels of each participating enterprise;

changes in the number of businesses in the relevant industry over the preceding three years;

market prospects for the relevant industry;

adopted or contemplated self-help methods, other than concerted action, to turn around the business; and

anticipated results of the concerted action.

In addition to that enumerated above, the Central Competent Authority may request the provision of other related materials.

Article 21

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 7, Paragraph 1, Article 14, of the Law shall specify the following information:

1. materials to show meeting the criteria to be recognized as a small or medium-sized enterprise.

2. anticipated concrete results in achieving improved operational efficiency or strengthened competitiveness.

Article 22

A small or medium-sized business as referred to in Subparagraph 7, Paragraph 1, Article 14, of the Law shall be determined in accordance with the criteria set forth in the Statute for the Development of Small and Medium-Sized Enterprises.

Article 23

Where an enterprise applying for approval of concerted action pursuant to Paragraph 1, Article 14 submits materials that are incomplete or are deficient in content, the Central Competent Authority may issue notice to require supplementation or correction of the application within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within the specified time period or is so made but the submitted materials remain deficient, the application will be rejected.

Supplementation or correction referred to in the preceding paragraph may be made only once.

Article 24

The three-month period specified in Article 14, Paragraph 2 of the Law shall be calculated from the day next to the date on which the Central Competent Authority receives the application. However, where the materials submitted by the enterprise are incomplete or deficient in content and the Central Competent Authority has issued a notice to require supplementation or correction within a specified time, the period shall be calculated from the day next to the date of receipt of the supplementation or correction.

Article 25

To apply for an extension pursuant to Paragraph 2, Article 15, of the Law, the enterprises shall prepare the following materials to file with the Central Competent:

1. an application form;

2. a copy of the original approval;

3. the reasons for applying for the extension; and

4. other documents or materials designated by the Central Competent Authority.

When the Central Competent Authority approves an extension, it shall record the original approval number and period along with the extension and publish them in the government gazette.

Article 26

The following factors shall be taken into consideration when determining whether just cause exists as referred to in Subparagraph 2, Article 19, of the Law:

1. supply and demand conditions in the market;

2. cost differences;

3. transaction amounts;

4. credit risks; and

5. other reasonable grounds.

Article 27

"Restrictions" as used in Subparagraph 6, Article 19, of the Law refers to the circumstances under which an enterprise engages in restrictive activity in regards to tie-ins, exclusive dealing, territory, customers, use, or otherwise.

In determining whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 28

In cases where actions of an enterprise violate the provisions of Paragraphs 1 or 3, Article 21, of the Law, the Central Competent Authority may order the enterprise to publish corrective advertisements pursuant to the provisions of Article 41 of the Law.

The methods, number of appearances, and duration of the advertisements referred to in the preceding paragraph shall be determined by the Central Competent Authority, taking into consideration the degree of impact of the original advertisements.

Article 29

(Deleted)

Article 30

The Central Competent Authority may refuse to process complaints that lack substantive content or have no genuine name or address affixed thereto.

Article 31

The Central Competent Authority, when giving notice as prescribed in Subparagraph 1, Paragraph 1, Article 27 of the Law, shall do so in writing.

The written notice in the preceding paragraph shall specify the following information:

name and residence or domicile of the recipient of the notice; if a company, sole proprietorship or partnership, trade association, or organization, the name of its responsible person and the address of its office or place of business;

the matter to be investigated and the explanations or materials that the notified party is required to provide with respect to such matter;

date, time, and place of required appearance;

provisions concerning punishment for failure to appear without proper reason.

The notice shall be served no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.

Article 32

A person notified pursuant to the preceding article may retain an attorney-in-fact to appear and make statements on his or her behalf, provided that when the Central Competent Authority deems necessary, it may give notice requiring appearance in person.

Article 33

After a person notified pursuant to the provisions of Article 31 has appeared and made a statement, the Central Competent Authority shall produce a written record of the statement, to be signed by the notified person. If the notified person is unable to sign the record of statement, he or she may seal or fingerprint it instead; if the notified person refuses to sign, seal, or fingerprint the record of statement, such facts shall be recorded.

Article 34

When issuing notice pursuant to Subparagraph 2, Paragraph 1, Article 27 of the Law, the Central Competent Authority shall include the following items in writing:

the name and residence or domicile of the notified person; if a company, sole proprietorship or partnership, trade association or organization, the name of the responsible person and the location of the office or place of business;

the matter to be investigated;

the explanations, books and records, documents, and other materials or evidence required to be submitted by the notified party;

the time limit for submission;

provisions concerning punishment for refusal to submit without justification.

Article 35

After the Central Competent Authority has received books and records, documents, and any other required materials or evidence provided by relevant agencies, associations, enterprises, or individuals, the Central Competent Authority shall issue a receipt at the request of the provider.

Article 36

When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:

motivation, purpose, and expected improper benefit of the acts;

the degree of the act's harm to market order;

the duration of the act's harm to market order;

benefits derived on account of the unlawful act;

scale, operating condition, and market position of the enterprise;

whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority;

types of, number of, and intervening time between past violations, and the punishment for such violations; and

remorse shown for the act and attitude of cooperation in the investigation.

Article 37

These Enforcement Rules shall take effect from the date of promulation.

Data Source：Fair Trade Commission Laws and Regulations Retrieving System