

Fair Trade Commission Disposal Directions (Policy Statements) on the Financial Industry

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1. Background

Financial enterprises play a "financial intermediary" role in the economy system. They have the important functions of providing liquidity, credit creation and etc. For the avoidance of 'systematic risk', financial enterprises have always been highly regulated. The capital that financial enterprises provide is a vital input to the business activities. As such, the intensity of competition in the financial industry will directly or indirectly affect the competition in other industries. In view of the financial enterprises' importance on competition, the Fair Trade Commission (hereinafter referred to as "the Commission"), has gathered and analyzed various types of action by financial enterprises that may violate the Fair Trade Law, based on the characteristics of the financial industry under the framework of the existing financial statutes and regulations. This Policy Statements is stipulated accordingly as a guide for the related enterprises to follow, and at the same time to serve as a reference for this Commission in handling relevant cases.

2. Definitions

The term "financial enterprises" in this Policy Statements refers to financial

institutions as defined in Article 4 of the Financial Institution Mergers Act, financial holding companies as defined in Article 4 of the Financial Holding Company Act, agricultural financial institutions as defined in Article 2 of the Agricultural Finance Act, bills finance companies as defined in Article 4 of the Act Governing Bills Finance Business, electronic payment Institutions as defined in Article 3 of the Act Governing Electronic Payment Institutions, issuers as defined in Article 3 of Act Governing Issuance of Electronic Stored Value Cards, insurance agents as defined in Article 8 of the Insurance Act, insurance brokers as defined in Article 9 of the Insurance Act, insurance surveyors as defined in Article 10 of the Insurance Act. It therefore includes financial holding companies, agricultural banks of Taiwan, banks, credit cooperatives, credit departments of farmers' and fishermen's associations, bills finance companies, bills companies, financial companies, credit card business institutions, Chunghwa Post Co., Ltd., securities and futures enterprises, insurance enterprises, and trust enterprises, specialized electronic payment institutions, electronic stored value cards businesses, insurance agents, insurance brokers, insurance surveyors and others.

3. Market Definition

The relevant market definition for financial enterprises is reviewed in principle in accordance with the Commission's "Guideline on the Definition of Relevant Market". In the case of financial enterprises' merger and acquisition, in order to thoroughly assess the participating enterprises' market powers as well as taking the characteristics of financial industry into account, the concept of "cluster market" may be adopted by grouping together as the same product market when individual products or services are significantly transactional complementarities or individual products or services normally provided in packaged form in the course of dealing. For instance, savings deposit and check deposit are grouped together as the deposit market.

4. Provisions Governing Mergers

Financial enterprises should submit a merger notification to the Commission prior to the merger if the circumstance, as described in paragraph 1, Article 10 and either one of the subparagraphs set forth in paragraph 1, Article 11 of the Fair Trade Law, is present, provided the proposed merger does not trigger any of the exemption provisions as described in Article 12 of the Fair Trade Law, Article 19 of Financial Holding Company Act, subparagraph 4, paragraph 1, Article 62-4 of the Banking Act, or subparagraph 4, paragraph 1, Article 149-7 of the Insurance Act.

In the establishment of a financial holding company, a merger notification should be submitted to the Commission prior to the merger if the circumstance as described in the preceding paragraph is present.

The thresholds and calculation of sales amount regarding the merger notification shall be reviewed under the Commission's "Thresholds and Calculation of Sales Amount for Enterprises of a Merger to File Notification with the Fair Trade Commission".

Financial enterprises' merger notifications shall be reviewed under "Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings". In general, the higher degree of market concentration before the merger or increased degree of market concentration resulting from the merger, the higher likelihood of competition constraints occurs. The higher overlapping of business or operation scope among the financial enterprises involved in the merger, the higher likelihood of the competition constraints occurs. On the other hand, the higher complementarities of business and the more significant synergy among the financial enterprises involved in the merger, the lower likelihood of competition constraints occurs. The lower entry barrier into the market which would be affected by the merger, the lower likelihood of competition constraints occurs. When a failing financial enterprise involved in the merger would inevitably exit from the market if it does not participate into the merger, the possibility of competition constraints would be lower.

When a business submits a merger notification, the Commission will not only conduct a review with reference to the factors listed in "Fair Trade Commission Guidelines on Handling Merger Filings", the following factors will also be taken into consideration:

- (1) The impact on the stability and the integrity of the financial markets.
- (2) The impact on the availability and convenience of financial services.
- (3) The impact on the innovation of financial services.
- (4) Policy made by the competent authority relevant to the financial industry.

5. Provisions Governing Concerted Actions

If financial enterprises, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise jointly determine the price, quantity, technology, products, facilities, trading counterparts, or trading territory with respect to goods or services, and thereby to restrict each other's business activities which would affect the market function of production, trade in goods, or supply and demand of services, such conduct is deemed as concerted actions under the Fair Trade Law. Moreover, the act of a trade association to

restrict activities of financial enterprises by means of its charter, a resolution of a general meeting of members or a board meeting of directors or supervisors, or any other means, is also deemed as concerted actions.

The Fair Trade Law regulates concerted actions by prohibiting it in principle but permitting it in exceptional instances. If acts of financial enterprises fall within the provisions of Article 14 of the Fair Trade Law and meets one of the requirements as set forth under the proviso of Article 15, Paragraph 1 of the Fair Trade Law, it is necessary to obtain a prior approval from the Commission for such concerted actions.

Illustration for illegal concerted actions of financial enterprises is shown as follows,

- (1) Jointly fixing prices: Financial enterprises jointly determine the price of goods or services, such as interest rates, insurance premium, service fees, handling fees and other important competitive variables, or agree jointly to raise or cut prices; agreement to calculate the price in accordance with the standard formula; agreement to the method, quota, or times for favorable discounts; agreement to payment in accordance with the announcement of the price of the charges; agreement to follow the price made by a particular enterprise, or through the trade association or other groups to limit individual financial enterprise's price decision or limit adjustment to such prices.
- (2) Restrictions on the terms of the transaction: Financial enterprises jointly determine important transactional conditions other than prices, such as payment method, payment terms, insurance underwriting conditions, promotions, gifts and others.
- (3) Market segmentation: Financial enterprises jointly divide into areas such as business scope, business items or trading counterparts, etc., or agreement not to solicit each other's existing customers.
- (4) Bid rigging: Financial enterprises and other bidders jointly determine the tender amount or agreement to take turns to bid, etc. for tender cases which are not subject to the Government Procurement Act.

The necessary cooperative actions taken by financial enterprises to provide goods or services to the extent reasonably necessary to achieve a legitimate commercial purpose are not, in principle, considered the

concerted action referred to in the Fair Trade Law. Examples of such necessary cooperative actions are shown as follows:

- (1) Syndicated loan schemes among banks (including the credit departments of farmers' and fishermen's associations and the Agricultural Bank of Taiwan) which is to meet the borrower's huge borrowing needs.
- (2) Interbank transactions conducted by the banks (including the credit departments of farmers' and fishermen's associations and the Agricultural Bank of Taiwan) to provide convenience to customers.
- (3) The joint underwriting adopted by the securities industry for the issuance of securities.
- (4) Collection and exchange of claims information by insurance enterprises for the purpose of enriching the insurance statistics in order to correctly calculate the risks.

6. Provisions Governing Deceptive and Misleading Advertisements

The deceptive and misleading advertising cases regarding financial enterprises are preferentially to be handled by the competent authority in charge of financial enterprises. If there is no relevant financial law or regulation, the Commission shall handle them in accordance with the provisions of Article 21 of the Fair Trade Law.

7. Provisions governing improper offerings of gifts or prizes

The improper offerings of gifts or prizes by financial enterprises are preferentially to be handled by the competent authority in charge of financial enterprises. If there is no relevant financial law or regulation, the Commission shall handle them in accordance with the provisions of Article 23 of the Fair Trade Law.

8. Provisions governing deceptive or obviously unfair conduct sufficient to affect trading order

A financial enterprise, which engages in one of the following deceptive or obviously unfair conducts which is sufficient to affect trading order, is likely to be in violation of Article 25 of the Fair Trade Law:

- (1) Failure to disclose loan interest rates or its calculation method when entering into a certificate of indebtedness or a loan contract with a borrower.
- (2) Refusal to provide a certificate of indebtedness or a loan contract when a borrower requests for a copy. In consideration of operational

needs, a financial enterprise may instead give the borrower a photocopy with the annotation "a genuine and faithful copy of the original" for him or her to retain.

- (3) Failure to expressly state in a loan contract the grounds triggering an acceleration clause and its effect, but accelerate the maturity of a debt in the event of a deficiency in the borrower's credit; or failure to specify such grounds in the contract in a prominent manner such as in bold font or in differently colored font even though the loan contract contains an acceleration clause.
- (4) Requiring a borrower to abide by unspecific catch-all clauses. For instance, requiring a borrower to abide by all current and future rules and bylaws of the financial enterprise or of the trade association to which the financial enterprise joins.
- (5) Failure to disclose the scope of obligations secured by a line-of-credit mortgage in a prominent font, failure to explain to the mortgager the legal effect in detail and failure to obtain the mortgagor's confirmation to prove that he or she understand the provisions of the mortgage. For instance, the scope of the mortgage covers the debt of guarantee, but the word "guaranty" is not printed in a prominent font. If the mortgagor is also the guarantor of another's loan, the financial enterprises does not provide written document or with the mortgagor's signature to prove that the he or she understand that during the period of guarantee or before the clearance of the loan, the secured scope of guaranteed debts is within the credit line under the mortgage.
- (6) Refusal to provide assistance in carrying out deletion of the mortgage registration after the borrower has settled the debt secured by the mortgage.
- (7) Passing on mortgage registration fees specified in Article 76 of the Land Act but failing to negotiate such passing-on on a case-by-case basis at the time of signing contract and to specify it in a particular clause of the contract.
- (8) Failure to disclose information of the method of calculating interest, the beginning date, or the ending date for the accrual, etc. to depositors in a contract or similar written materials in advance; or failure to fully reveal information on service fees before charging service fees in any names, such as "account administration fees," "transfer fees," "check ordering fees," or other service fees.

- (9) Failure to disclose the way of handling overdue deposit certificates in the contract or other written form.
- (10) Failure to disclose information relating to checking account balance amounts in the contract while a financial enterprise requires a checking account holder to maintain a certain minimum balance, such as notifications and effective time of deposit balances and adjustments, the effect of not meeting the balance amount (such as deduction of fixed fees or suspension of use of checks).
- (11) Failure to disclose the method of calculating revolving credit-card credit interest and interest rate levels, or the beginning date for the accrual of revolving credit-card interest earlier than the date the funds are actually remitted, in the contract in plain language accompanied by specific examples.
- (12) Failure to disclose in the cash-card applications and contracts the nature of the loan, the consequence of default, the interest rate, the method of repayment, the calculation of each relevant fee, and the procedure of contract termination. Such information shall be expressed in plain language along with examples to specifically explain the calculation method, time period, and rates for the interest, late payment interest, and penalties.
- (13) Failure to explicitly limit the scope of a guarantor's or a joint guarantor's responsibility to the amount of the debt resulted from the concrete and specific legal relationship between the debtor and it, or stipulated the maximal amount of the responsibility in the contract ; or failure to clearly stipulate that a guarantor can terminate the guaranty responsibility at any time in accordance with Article 754 of the Civil Law when the guaranty agreement provides an undefined duration for the continuous debts; or failure to record important trading information (for example, the scope of guarantee and the meaning of the maximal amount of guaranty) in a prominent manner, in bold font or in differently colored font in the guaranty contract or guaranty clauses in the standard loan contract after the guarantor or the joint guarantor reads each item of the contract and signs the contract; or failure to provide the original copy or a copy of the loan contract and of the guaranty contract which note that "Completely matched with the original copy" to the guarantor or the joint guarantor for his or her keeping when requested.
- (14) Failure to adequately disclose the nature of a consumer loan being combined with products (or services) when a financial enterprise

markets the consumer loan. For instance, failure to separate these documents from other documents such as an installment agreement and agreement for sale and purchase of products (services); or failure to disclose the name of the financial enterprise, the effects of the breach of the contract, and other material transaction information in a prominent font.

- (15) Improperly coerce borrower of a housing loan to purchase a related life insurance; or failure to disclose in writing important trading information, such as the coverage, priorities of claims, and revocation period, etc. of the life insurance to the borrower.

Fraudulent or dishonest acts by the financial enterprise as stipulated in the preceding paragraph are preferentially to be handled by the competent authority in charge of the financial institution in accordance with the relevant laws and regulations. If there is no pertinent financial regulations, the Commission shall handle it in accordance with the provisions of Article 25 of the Fair Trade Law.

9. This Policy Statements merely set out examples and explanations of some common types of practices of financial enterprises that may violate the Fair Trade Law. It is not an exhaustive treatment of the subject, and the Commission will supplement and amend it from time to time. The handling of individual cases must still be determined according to the specific facts of that case.

Appendix: Illustration for types of acts that the Fair Trade Law does not apply.

Type of Dealings	Applicable Laws or Rules
Loan interest rates are too high	Seek resolution through a civil action.
Charges for service fees in special occasions	Seek resolution through a civil action.
Passing on credit card service fee	Complaints to Issuer or Acquirer first, and then seek redress through the dispute resolution process of the Financial Consumer Protection Act
Unauthorized credit card charge	Seek resolution through a civil or criminal action, or the dispute resolution process of the Financial

	Consumer Protection Act
Credit card/cash card rates are too high	Seek resolution through a civil action.
A prepayment penalty is too high	Seek resolution through a civil action.
A prepayment penalty for the automobile loan or credit loan is collected and paid in advance	Resolution through a civil action.
Insurance claims	Seek resolution through a civil action, or the dispute resolution process of the Financial Consumer Protection Act.
Disclosure of personal data	Seek resolution through a civil action, or handled by the competent authority under relevant provisions of financial regulations or Personal Information Protection Act.