

Fair Trade Commission Disposal Directions (Guidelines) on Cases of Suspended Investigation

Passed by the 1233rd Commissioners' Meeting on June 24, 2015
Promulgated by Order Kung Fa Tzu No. 10415605591 on July 2, 2015

1. The Fair Trade Commission (“the Commission”) formulated these guidelines for handling cases in which the investigation conducted on a violation of the Fair Trade Law (“the Law”) has been suspended in accordance with the provisions of Article 28 of the Law.

2. Cases that are applicable to having the investigation suspended in accordance with the provisions of Article 28 of the Law are limited to cases in which the investigation procedure is in progress.

The in-progress status of the investigation procedure, as referred to in the preceding Paragraph, has its starting point when the Commission receives a complaint or initiates an investigation on a specific case, and ends when the final decision of penalty or non-penalty disposition is determined.

3. The suspension of an investigation as described in the provisions of Article 28 of the Law does not apply to the cases described below:

(1) the offense of the case has a significant impact on the order of market competition;

(2) there is no significant difficulty in investigating the facts of violation, or the evidence obtained is sufficient for the Commission to determine whether a violation of the Law is committed;

(3) some businesses that are involved in the violation have applied to the Commission for exemption or fine reduction and its motion has been granted by the Commission in accordance with the provisions of Article 35 of the Law;

(4) the conduct involved in the case is in violation of Article 22 of the Law.

If the conduct involved in the case is in violation of Article 15 of the Law, every party participating in the concerted action must give a commitment in order to apply Article 28 of the Law.

4. If a case involves the violation of the Law, but a condition exists in this case that prohibits a fine in accordance with the Law, or if the violation is so minor that no fine shall be imposed, the suspension of an investigation as described in Article 28

of the Law shall apply.

5. The commitment stipulated by Article 28 of the Law shall be initiated and given by the businesses under investigation.

The commitment shall be presented in writing and clearly provide the following information:

- (1) the specific case under investigation;
- (2) the specific content of the commitment, such as cease the offense, rectification, compensation, or other measures;
- (3) a description on how the commitment is sufficient in reconciling the results of the offense, such as the recovery or enhancement effects on the market competition, trading order, or overall economic interests;
- (4) the time required for the implementation of the commitment;
- (5) the specific measures that are helpful for the Commission's supervision over the implementation of the commitment, such as the submission of regular status report, or the help from an objective and impartial third party who can assist with the supervision;
- (6) other contents relevant to the commitment.

6. The decision made by the Commission to suspend investigations in accordance with Paragraph 1, Article 28 of the Law shall consider that, based on the actual situation of the cases, whether or not the commitment given by the business under the investigation is sufficient to reconcile the results of the offense. In addition, the following factors should also be included in the consideration:

- (1) the culpability of the offense type in the case;
- (2) the damages that have been inflicted, or are likely to continue to be inflicted, by the offense on the market competition;
- (3) the extent of recovery or improvement that the commitment may have on the market competition;
- (4) the possibility of implementing the commitment;
- (5) the required costs of administrative resource that the Commission has invested in the investigation to date and in subsequent investigations;
- (6) the costs required for the Commission to supervise the implementation of the commitment;
- (7) the possibility of, and the pros and cons for, the Commission to adopt other administrative dispositions.

7. The time frame set by the Commission in accordance with Paragraph 1, Article 28

of the Law shall be determined by, depending on the content of the offense committed by the business under the investigation, the damages that have been inflicted or may be inflicted on the market competition, what reasonable amount of time is required to implement the commitment, and other factors. In principle, it should not exceed six months. However, it may be extended if necessary.

8. The decisions made by the Commission, to suspend investigations in accordance with Paragraph 1, Article 28 of the Law, shall be examined and approved by the Commissioners' Meeting.

The decision to suspend investigations as mentioned in the preceding Paragraph shall be sent to the business under investigation and the complainant in writing. It shall include information detailing the content of the commitment, the implementation period, and the proviso concerning the resumption of the investigation as prescribed in Paragraph 3, Article 28 of the Law.

If the business under investigation submitted a request for suspension of the investigation, however the request was rejected after due consideration, the reasons for the rejection may be sent along with the final decision of the case.

9. The Commission will still conduct the following actions on cases in which the investigation has been suspended, so that it can verify whether the conditions to resume investigation as prescribed in the proviso of Paragraph 3, Article 28 of the Law exist or not:

- (1) monitor the business under investigation to verify that it has implemented its commitment;
- (2) continue to monitor market conditions and collect the information necessary to decide whether or not the facts upon which the decision to suspend the investigation is based have changed significantly or the business under investigation is providing incomplete or untrue information.

10. If the conditions as prescribed in the proviso of Paragraph 3, Article 28 of the Law are found to exist in cases in which investigation have been suspended before the expiration of the prescribed time set by the Commission, the unit undertaking the cases shall prepare the report on the case as soon as possible and submit it to the commissioner on rotation duty, the vice chairperson, and the chairperson, for review so that the investigation could be resumed.

11. If the prescribed times set by the Commission are expiring for cases with suspended investigation status, the unit undertaking the cases should submit the

supervision status reports to the Commissioners' Meeting for review, so that the decision as to whether to terminate or resume the investigations could be made.

12. The decision to resume or terminate an investigation shall be sent in writing to the business under investigation and the complainant.

For cases where the determination to resume investigations is based on Article 10 of the Law, the date for resuming the investigation is the date of the signed approval. For cases where the determination to resume investigations is in accordance with Article 11 of the Law, the date of resolution reached in the Commissioners' Meeting is the date for resumption of the investigation.

13. For cases in which the investigations are resumed in accordance with Subparagraph 1 or Subparagraph 3 in the Proviso of Paragraph 3, Article 28 of the Law, shall not have the investigations suspended again in accordance with Paragraph 1 of the same Article.

14. For cases in which investigations have been terminated in accordance with Paragraph 3, Article 28 of the Law, if subsequently the businesses commit the same offense again and a separate investigation finds that the businesses have violated the law and should be penalized, the severity of the punishments for the businesses may be increased.