

Fair Trade Commission Disposal Directions (Policy Statements) on Motorcycle Enterprises

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1. Purpose

In order to maintain trading order and consumers' interests, ensure free and fair competition, promote economic stability and prosperity, and to help motorcycle enterprises understand and comply with the Fair Trade Law, the Fair Trade Commission (hereinafter referred to as "the Commission") has gathered and analyzed various types of behavior by motorcycle enterprises that may violate the Fair Trade Law and the Policy Statements are stipulated accordingly.

2. Definitions

Terms used in the Policy Statements are defined as follows,

- (1) the term "motorcycle enterprises" refers to businesses involved in or related to motorcycle sales, manufacture, general distribution, regional distribution, specialty stores, and non-specialty stores;
- (2) the term "has a certain market position" refers to by measuring the volume of import and export of a certain product as well as its domestic sales volume, the market share of such product is more than 10 percent. In addition, the number of large enterprises is limited while there are many small entities within the same industry and the market share of each is de minimums;
- (3) the term "improper means" refers to imposing a fine on the offender, limiting the placing of a new model of vehicles or other substantial sanctions;
- (4) the term "distribution organization" refers to a concerted action organization jointly gathered by downstream distribution businesses, which are demanded, by employing the conditions of supply or other means of the dominant position,

by a motorcycle manufacturing business who has the competitive relationship with those distribution businesses.

3. Various Types of conduct of Motorcycles Enterprises that Constitute Violations of the Fair Trade Law

(1) Merger

(A) Provisions governing merger: Article 10 of the Fair Trade Law provides that "the term 'merger' as used in this Law means any one of the following conditions: 1. where an enterprise and another enterprise are merged into one; 2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one third of the total number of voting shares or total capital of such other enterprise; 3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or assets of such other enterprise; 4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or 5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise." Paragraph 1, Article 11 of the Fair Trade Law further indicates that "any merger that falls within any of the following circumstances shall be filed with the competent authority in advance: 1. as a result of the merger the enterprise(s) will have one third of the market share; 2. one of the enterprises in the merger has one fourth of the market share; or 3. sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the competent authority." The sales amount mentioned above shall be announced by the Commission according to the industries it selected. Enterprises shall not proceed to merge within a period of 30 working days starting from the date the Commission receives the complete filing materials, provided that the Commission may shorten or extend the period as it deems necessary and notifies the filing enterprise of such change in writing. When the Commission extends the period in accordance with the preceding paragraph, such extension may not exceed 60 working days. For cases of extension, decisions on the filing shall be made in accordance with Article 13 of the Fair Trade Law. If the Commission fails to notify of the extension or make any decision before the period expires, the enterprises may proceed to merge. However, the merger may not proceed under any of the following circumstances: 1. where the filing enterprises consent to a further extension of the period; and 2. where the filing contains false or misleading

items. Article 12 of the Fair Trade Law further provides that "Paragraph 1 of the preceding Article shall not apply to any of the following circumstances: 1. where any of the enterprises participating in a merger, or its 100% held subsidiary, already holds no less than 50% of the voting shares or capital contribution of another enterprise in the merger and merges such other enterprise; 2. where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise merge; 3. where an enterprise assigns all or a principal part of its business or assets, or all or part of any part of its business that could be separately operated, to another enterprise newly established by the former enterprise solely; 4. where an enterprise, pursuant to the provisions of Paragraph 1, Article 167 of the Company Act or Article 28-2 of the Securities and Exchange Act, redeems its shares held by shareholders so that its original shareholders' shareholding falls within the circumstances provided for in Subparagraph 2, Paragraph 1, Article 10 herein; 5. where a single enterprise reinvests to establish a subsidiary and holds 100% shares or capital contribution of such a subsidiary; and 6. any other designated type of merger promulgated by the competent authority. "

(B) When a motorcycle enterprise engages in a merger with other competitors or other enterprises to which having a controlling or subsidiary relationship with the merged enterprise, the motor enterprise should submit a merger notification to the Commission prior to the merger if the circumstances 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 exemptions described in Article 12 of the Fair Trade Law. Participating enterprises of the merger shall not proceed to merge within a period of 30 working days starting from the date the Commission receives the complete filing materials, while the Commission may shorten or extend the period as it deems necessary and notifies the filing enterprise of such change in writing.

(2) Concerted Action

(A) The law governing concerted action: Article 14 of the Fair Trade Law provides that "the term 'concerted action' as used in this Law means that competing enterprises at the same production and/or marketing stage, by means of contract, agreement or any other form of mutual understanding, jointly determine the price, quantity, technology, products, facilities, trading counterparts, or trading territory with respect to goods or services,

or any other behavior that restricts each other's business activities, resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services. The term 'any other form of mutual understanding' as used in the preceding Paragraph means other than contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions. The mutual understanding of the concerted action may be presumed by considerable factors, such as market condition, characteristics of the good or service, cost and profit considerations, and economic rationalization of the business conducts. The act of a trade association or other groups, as referred to in Paragraph 2, Article 2, to restrict activities of 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, to restrict activities of enterprises is also deemed as concerted action as used in this Law." Article 15 of the Fair Trade Law further provides that " no enterprise shall engage in any concerted action; unless the concerted action that meets one of the following requirements is beneficial to the economy as a whole and in the public interest, and the application with the competent authority for such concerted action has been approved: 1. unifying the specifications or models of goods or services for the purpose of reducing costs, improving quality, or increasing efficiency; 2. joint research and development on goods, services, or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency; 3. each developing a separate and specialized area for the purpose of rationalizing operations; 4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports; 5. joint acts in regard to the importation of foreign goods, or services for the purpose of strengthening trade; 6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, because of economic downturn, that the enterprises in the same industry have difficulty to maintain their business or encounter a situation of overproduction; 7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium enterprises ; or 8. joint acts required for the purposes of improving industrial development, technological innovation, or operational efficiency. After receipt of the application referred to in the preceding Article, the competent authority shall make a decision within three months, the period of which may be extended once if necessary."

(B) Types of conduct of motorcycle enterprises which might involve in concerted actions:

- (i) when a motorcycle enterprise uses coercion, inducement, or other inappropriate means to make its competing enterprises cease the supply or other restraining business activities, and the act is sufficient to affect the market function of the motorcycle industry, provided such act does not trigger any of the exemptions described in proviso of Article 15 of the Fair Trade Law, it may be in violation of Article 15 of the Fair Trade Law;
- (ii) when motorcycle enterprises jointly determine or restrict the resale price to be charged by regional distributions, specialty stores, or general stores, or jointly make other enterprises not to engage in price competition through meetings, shareholders' meetings, or board meetings of the distribution organization, it may be in violation of Article 15 of the Fair Trade Law.

(3) Restriction on Resale Prices

(A) the law governing restriction on resale price: Article 19 of the Fair Trade Law provides that "an enterprise shall not impose restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party or to such third party for making further resale. However, those with justifiable reasons are not subject to this limitation. The provision of the preceding paragraph shall apply mutatis mutandis to services provided by an enterprise."

(B) types of conduct of motorcycle enterprises which might involve in the restriction on resale prices: If a motorcycle enterprise imposes restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party or to such third party for making further resale without justifiable reasons, such conduct may constitute a violation of Article 19 of the Fair Trade Law.

(4) Impeding Fair Competition

(A) the law governing restraining competition: Article 20 of the Fair Trade Law provides that " no enterprise shall engage in any of the following acts that is likely to restrain competition: 1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise; 2. treating another enterprise discriminatively without justification; 3. preventing competitors from participating or engaging in competition by inducement with low price, or other improper means; 4. causing another

enterprise to refrain from competing in price, or to take part in a merger, concerted action, or vertical restriction by coercion, inducement with interest, or other improper means; 5. imposing improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement.

(B) types of conduct of motorcycle enterprises which might involve in restrain or impeding fair competition:

- (i) if a motorcycle manufacturer or distributor, without any justifications, refuses to sell its own brand motorcycles to the distribution business which is within the same marketing channel network, or to the non-specialty store who does not sell the particular brand motorcycles, such conduct may constitute a violation Subparagraph 2, Article 20 of the Fair Trade Law.
- (ii) if a motorcycle manufacturer, having a certain market position, makes another enterprise to take part in organizing distribution organization by improper means, such conduct may be in violation of Subparagraph 4, Article 20 of the Fair Trade Law.
- (iii) if a motorcycle enterprise makes another enterprise to refrain from competition in price through meetings, shareholder's meetings, or board meetings of the distribution organization, such conduct may constitute a violation of Subparagraph 4, Article 20 of the Fair Trade Law.
- (iv) if a motorcycle manufacturing and sales business with a business providing motorcycle technique, motor business information or managing services, no matter what brand, makes another enterprise to take part in organizing distribution organization by improper means, such conduct may constitute a violation of Subparagraph 4, Article 20 of the Fair Trade Law.
- (v) if a motorcycle manufacturing business, having a certain market position, divides or restricts the motorcycle sales areas or trading counterparts and other business activities of distributors or regional distributors by improper means, such conduct may be in violation of of Subparagraph 5, Article 20 of the Fair Trade Law.
- (vi) If a all-brands motorcycle manufacturing and sales business with a business providing motor technique, motor business information or managing services, no matter what brand, restrict the trading counterpart's motorcycle sales area, its trading counterparts and other business activities, such conduct may constitute a violation of

Subparagraph 5, Article 20 of the Fair Trade Law.

- 4.** The Policy Statements merely set out examples and explanations of some common types of practices of motorcycle enterprises that may violate the Fair Trade Law. They are no exhaustive treatment of this subject at all, and the Commission will supplement and amend them from time to time. The handling of individual cases will be determined by the specific facts of the case at issue.