

Fair Trade Commission Disposal Directions (Policy Statements) on the Sales of Elementary and Junior High School Textbooks

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1. Background

In the early days, elementary and junior high school textbooks were exclusively issued by the National Institute for Compilation and Translation of the Ministry of Education, and these textbooks were accordingly known as "ministry textbooks". Private publishers have been allowed to edit and print textbooks for those schools since 1996. Such textbooks are termed "approved textbooks" in reflection of the fact that they must be examined and approved by the Ministry of Education. After the textbook publication market was opened, some publishers of "approved textbooks" have engaged in improper marketing activities for boosting sales or retaining market shares. These improper marketing actions have obviously impacted on the selection of elementary and junior high school textbooks, and constitute restraining competition or unfair competition with other competitors in the same business which has not employed the same marketing actions. In order to maintain trading order and ensure free and fair competition, the Fair Trade Commission (hereinafter referred to as "the Commission") has gathered and analyzed the various types of practices by relevant enterprises that may violate the Fair Trade Law, and this Policy Statements is stipulated accordingly. The purpose in preparing this Policy Statements is to assist the relevant enterprises in understanding and abiding by the relevant provisions of the Fair Trade

Law as well as to provide suggestions for the Commission in handling pertinent cases.

2. Definition

The "sales enterprises" in the Policy Statements shall refer to publishers, distributors, bookstores, and other sales enterprises involved with elementary and junior high school textbooks.

3. Abuse of Monopolistic Position

If a sales enterprise, whose market position conforms to that of a monopolistic enterprise as prescribed by the Fair Trade Law, engages in any of the following acts, the sales enterprise may be deemed in violation of Article 9 of the Fair Trade Act: (1) directly or indirectly preventing any other enterprises from competing by unfair means; (2) improperly setting, maintaining or changing the price for goods or the remuneration for services; (3) causing a trading counterpart to give preferential treatment without justification; or (4) other abusive conducts by its market power.

4. Concerted Action

If a sales enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise at the same production and/or marketing stage to jointly determine the price, quantity, technology, products, facilities, trading counterparts or trading territory with respect to goods and 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, such a concerted action may be deemed in violation of Article 15 of the Fair Trade Law.

5. Restraint of Resale Price

Where a sales 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 any justification, the sales enterprise may be deemed in violation of Article 19 of the Fair Trade Law.

6. Discrimination

Where a sales enterprise treats another enterprise discriminatively without justification and likely to restrain competition, the sales enterprise may be deemed in violation of Subparagraph 2, Article 20 of the Fair Trade Law.

7. Improperly Restraining trading counterpart's business activity

If a sales enterprise imposes improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement, such as restraint of distribution areas, tying arrangement, or sales of books in sets and etc., and is likely to restrain competition, the sales enterprise may be deemed in violation of Subparagraph 5, Article 20 of the Fair Trade Law.

8. Obviously Unfair Conducts

If a sales enterprise gives or foretell to give money, articles, or other economic benefits to improperly secure opportunities for the sale of its textbooks, such an action shall be against the ethics of commercial competition and may be deemed in violation of Article 25 of the Fair Trade Law.

Examples of the aforementioned money, articles, or other economic benefits to improperly secure opportunities for the sale of its textbooks are listed as follows:

(1) Money

- A. Providing money or gift certificates, etc.
- B. Providing money in the form of subsidizing seminars, workshops, facilities, office supplies, or in other names.
- C. Transportation fees or lodging fees, etc. for visiting the sales enterprise.
- D. Travel expenses or allowances for participation in seminars, workshops, or other activities.
- E. Providing money in the form of textbook discounts or refund handling fees.
- G. Excessive remuneration for editing work, which is apparently far beyond the reasonable market price.

Other improper payments.

(2) Articles: Supplementary teaching aids that are irrelevant to the utilization of the textbooks in question, i.e., teaching aids that are not necessary for teaching.

(3) Other economic benefits

A. Tour or accommodation offers.

B. Banquets before or after a conference or seminar.

C. Other improper economic benefit offers.

9. Penalty and Legal Liability for Violations of Relevant Provisions of the Fair Trade Law

(1) As for enterprises that are in violation of Article 9 or Article 15 of the Fair Trade Law, according to Article 34 of Fair Trade Law, the Commission may in line with paragraph 1 of Article 40 of the same law order such enterprises to cease, rectify its conduct or take necessary corrective action within the time prescribed in the order. Shall such enterprise fails to cease, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, or conduct the same violation again after its ceasing such conduct, the actor may be subject to a 3-year or less prison sentence, detention or criminal fines of not more than NT\$100,000,000, or both.

(2) With enterprises that are in violation of Article 19 or Article 20 of the Fair Trade Law, according to Article 36 of the same law, the Commission may in line with paragraph 1 of Article 40 of this law order such enterprises to cease, rectify its conduct or take necessary corrective action within the time prescribed in the order. Shall such enterprise fails to cease, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, or conduct the same violation again after its ceasing such conduct, the actor may be subject to a two-year or less prison sentence, detention, or criminal fines of not more than NT\$50,000,000, or both.

(3) The Commission, pursuant to paragraph 1 of Article 40 of the Fair Trade Law, may order any enterprise that violates Article 9, 15, 19, and 20 of this Act to cease, rectify its conduct or take

necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than NT\$ 100,000 nor more than NT\$50 million. Shall such enterprise fails to cease, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Commission may continue to order such enterprise to cease, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than NT\$ 200,000 nor more than NT\$ 100 million until its ceasing, rectifying its conduct or taking the necessary corrective action. The Competent Authority may impose an administrative fine up to 10% of the total sales revenue of an enterprise in the previous fiscal year without being subject to the limit of administrative fine set forth in the preceding paragraph if the enterprise is deemed by the Competent Authority as in serious violation of Article 9 or Article 15.

- (4) The Commission, pursuant to Article 42 of the Fair Trade Law, may order any enterprise that violates Article 25 of this Act to cease, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than NT\$50,000 nor more than NT\$25 million. Shall such enterprise fails to cease, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the competent authority may continue to order such enterprise to cease, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than NT\$ 100,000 nor more than NT\$ 5 million until its ceasing rectifying its conduct or taking the necessary corrective action.
- (5) If any enterprise violates the provisions of the Fair Trade Law, in addition to criminal or administrative liabilities, such an enterprise shall also bear civil liabilities for damage compensation in accordance with Chapter 5 of the Fair Trade Law.

10. This Policy Statements only illustrates certain types of conducts that often occur in the elementary and junior high school textbook supplying industry and are possibly in violation of the Fair Trade Law. The Commission shall make necessary supplementation or revision to rectify any deficiency found therein. When handling cases, the Commission will make its decision based on the concrete facts available in each case.