

## **Fair Trade Commission Disposal Directions (Guidelines) on Big Enterprises' Payment to Small and Medium-sized Enterprises**

Passed by the 985th Commissioners' Meeting on 21 September 2010

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Promulgated by Order Kung Yi Tzu No. 1041560119G on 16 February 2015

### 1. (Purpose)

These Guidelines are adopted to ensure free competition, maintain trading order and effectively review cases of restraining competition or unfair competition involving big enterprises' deferring the payment of contract price to small and medium-sized enterprises.

### 2. (Definition)

Terms used in these Guidelines are defined as follows:

(1) The term "small and medium-sized enterprise" refers to an enterprise meeting the defining standards for small and medium-sized enterprises as stipulated in the Statute for Development of Small and Medium-sized Enterprises.

(2) The term "big enterprise" refers to an enterprise of business scale exceeding the defining standards for small and medium-sized enterprises and in a market advantageous position.

### 3. (Factors to be taken into Account Concerning Market Advantageous Position)

In determining whether big enterprises have market advantageous position, the totality of such factors as their business scale and the market share as compared with the small and medium-sized enterprises, the trading dependence of the small and medium-sized enterprises on the big enterprises, the possibilities of changing trading counterparts and the supply and demand with respect to a specific product should be considered.

### 4. (Types of Abuse of Market Advantageous Position related to Payment)

The dispute with respect to payment shall be solved according to the written agreements, if any, as made by and entered into between big enterprises and small and medium-sized enterprises.

If there is no written agreement regarding payment between big enterprises and small and medium-sized enterprises, any of the following acts that big enterprises have conducted when small and medium-sized enterprises have performed the counter-prestation is deemed abusing market advantageous position:

- (1) Deferred payment without just cause;
- (2) Knowingly delivering a dishonored negotiable instrument in lieu of cash payment; or
- (3) Reducing the contract price without notice and explanation.

In determining whether just cause exists as referred to in item (1) of the forgoing paragraph, the totality of such factors as conventional practices of dealing, whether there is any cause attributable to small and medium-sized enterprises, the impact of the macro-economic environment on big enterprises' ability to pay and any other reasonable grounds shall be taken into consideration.

#### 5. (Procedures)

The Commission may investigate and handle the case upon complaints, if big enterprises fall within any of the circumstances as specified in Clause 4, paragraph 2 of these Guidelines, but fail to make adjustment or have satisfied negotiation within three months upon the notification of small and medium-sized enterprises claiming for payment.

#### 6. (Cease Investigation)

In conducting investigation into a case, the Commission may cease the investigation if any of the following circumstances occurs:

- (1) Both parties have reached a settlement;
- (2) Payment has been made;
- (3) Decisions has been made either by a court or by an arbitration tribunal; or

(4) Other rules set by the Commission stipulate that the investigation may be ceased.

#### 7. (Legal Effect)

If a big enterprise is a monopoly and falls within any of the circumstances as specified in Clause 4, paragraph 2 of these Guidelines, it may be in violation of Article 9, section 4 of The Fair Trade Law. If a big enterprise is not a monopoly and falls within any of the circumstances as specified in Clause 4, paragraph 2 of these Guidelines, and the conduct is obviously unfair and likely to affect trading order, it may be in violation of Article 25 of the Fair Trade Law.