

General Description of the Regulations for Calculation of Administrative Fines for Serious Violations of Articles 10 and 14 of the Fair Trade Law

Paragraphs 2 and 3 were added to Article 41 of the Fair Trade Law (hereinafter referred to as the Law) and the addition was promulgated on November 23, 2011. It was deemed necessary due to the tremendous impact of abuse of market power by monopolistic enterprises and concerted action between enterprises on market competition and order. Moreover, in certain serious violations, the profits that enterprises obtained from such unlawful conduct far exceeded the upper limit for administrative fines set forth in Paragraph 1, Article 41 of the Law. To ensure such unlawful conduct would be given severe punishments and deter future attempts, it is therefore stipulated in Paragraph 2 that the central competent authority may impose an administrative fine up to ten percent of the total sales income of enterprises deemed in serious violation of Articles 10 and 14. Meanwhile, the Regulations for Calculation of Administrative Fines for Serious Violations of Articles 10 and 14 of the Fair Trade Law (hereinafter referred to as the Regulations) were also enacted in accordance with Paragraph 3 to provide the legal basis for fine imposition. The Regulations contain eight articles in total and the key points are as follows:

1. Definition of “Serious Violations”

“Serious violations” are defined as unlawful conduct leading to severe impact on market competition and order. Besides a list of factors to be taken into consideration, the addition also sets the guidelines for the central competent authority in determination of the seriousness of violations based on the total sales and profits obtained from the unlawful conduct. (Article 2 of the draft)

2. Definition of the “total sales income in the previous fiscal year”

To prevent the administrative fine imposed by the central competent authority from exceeding the amount enterprises can afford, the total business income of the concerned enterprise in the previous fiscal year is to be adopted as the criterion to assess the scope of operation and financial capacity of the enterprise when the central competent authority determines the final sanction. (Article 3 of the draft)

3. Calculation of the administrative fine amount

Calculation of the administrative fine amount to be imposed is to be conducted in two steps. Initially, the basic amount is calculated, and then the final administrative fine is adjusted and determined by taking into consideration of the adjustment factors. (Article 4 of the draft)

4. Definition of the basic amount

It is stipulated that thirty percent of the total product or service sales achieved during the violation period is to be adopted as the basic amount of the administrative fine. (Article 5 of the draft)

5. Adjustment factors

The adjustment factors are specified, including the reasons for administrative fine increase and reduction, for the central competent authority to adjust the basic amount level accordingly when determining the sanction to be imposed in each case. (Article 6 of the draft)

6. The upper limit for administrative fines

As set forth in Paragraph 2, Article 41 of the Law, the upper limit for administrative fines may not exceed ten percent of the previous fiscal year's total sales income of the enterprise to be sanctioned. (Article 7 of the draft)

7. Specification of the date of enforcement of the Regulations (Article 8 of the draft)