

Fair Trade Commission Disposal Directions (Policy Statements) on Trade Associations and Other Business Groups

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1. Trade associations and other business groups are organizations founded to smooth out relations between businesses in the same trade, foster common interests. So the activities of trade associations and other business groups and the applicability of the Fair Trade Act to such activities are a matter of common concern in various circles. To assist trade associations' and other business groups' understanding, and to facilitate implementation of the norms prescribed in the Fair Trade Act, the Fair Trade Commission (hereinafter referred to as "the Commission") has gathered and analyzed the various types of action by trade associations and other business groups that may violate the Fair Trade Act and this Policy Statements is stipulated accordingly. The purpose in preparing this Policy Statements is to assist trade associations and other business groups in understanding and abiding by the relevant provisions of the Fair Trade Act as well as to provide suggestions for the Commission in handling relevant cases.
2. The term "trade associations and other business groups" in this Policy Statements refers to the following:
 - (1) Industrial associations and chambers of industry organized under the Industrial Association Act;

- (2) Commercial associations, federations of commercial associations, exporter associations, and federations of exporter associations, and chambers of commerce organized under the Commercial Association Act;
 - (3) Professional groups established according to other laws and regulations, such as bar associations, accountant associations, architect associations, doctor associations and technician associations; and
 - (4) Other business organizations, besides those described in the preceding sub-paragraphs, lawfully established according to the Civil Organizations Act or other relevant laws to enhance their members' interests.
3. Following Acts of trade associations and other business groups to restrict activities of members 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, and resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services are concerted actions and in violation of Article 15 of the Fair Trade Act:
- (1) Restricting members from price competition or price fixing for the same products or services among members. For examples,
 - A. setting and issuing the price reference list, charges standards and the price adjustment scale for the products or services;
 - B. providing the price adjustment time for the products or services; or
 - C. authorizing the chairman of the board of trustees to set and enact the product price or service fee.
 - (2) Restricting members on the trading areas, trading partners, or the content of the trading. For examples,
 - A. restricting members' business locations or sales areas;
 - B. restricting members from soliciting trading counterparts;

- C. limiting members on their bidding price, whether to bid or not and other content of the bidding materials; or
 - D. requesting members and their upstream and downstream businesses stop supply, purchase or other trading activities with non-members.
- (3) Restricting the entry into and exit from specific markets by enterprises. For example,
- A. boycotting products and services from non-members; or
 - B. refusal to admit to the association the enterprise which by law can practice only when joining the association.
- (4) Imposing restrictions on the types, specifications, or forms of goods or services.
- (5) Restricting the production, delivery, sales, supply of goods and service, or the expansion of capacity or scale. For example,
- A. imposing restriction by means of quotas, ceilings or floors of output, inventories, production time, and procurement of raw materials, and etc.;
 - B. imposing unified leaves or increase or decrease leave days, rest days, or limiting the number for participating exhibitions;
 - C. imposing restrictions on members' retooling, business expansion, and installation of new machinery;
 - D. imposing restriction on members' introduction of technology, and research and development; or
 - E. imposing restrictions on members' business content and manner.
- (6) Restricting the terms of sales, service, and payment. For example,

- A. imposing restriction on payment intervals or payment terms;
- B. imposing restriction on delivery points and means of delivery; or
- C. imposing restriction on the duration, scope, and types of after-sales service.

(7) Any other acts which jointly restrict enterprises from competition.

4. Under the Fair Trade Act, concerted action is prohibited unless the Commission grants a specific exemption. Accordingly, trade associations and other business groups should apply first to the Commission for approval if a proposed concerted action meets any one of requirement as stipulated in paragraph 1, Article 15 of the Fair Trade Act.

5. Although the act of trade associations and other business groups does not constitute the concerted action as identified in Clause 3 of this Policy Statement, it is a violation of item 1, Article 20 of the Fair Trade Act, if such act is causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise, and is likely to restrain competition. For Example,

(1) causing members or other enterprise to discontinue supply, purchase, other business transaction with a particular enterprise by letter or fax in connection with relevant constrain and sanction; or

(2) causing members to discontinue the business transaction with a particular enterprise by disseminating the list of such particular enterprise to its member for the purpose of injuring such particular enterprise.

Although the act of trade associations and other business groups does not constitute the concerted action as identified in Clause 3 of this Policy Statement, it is a violation of item 2, Article 20 of the Fair Trade Act, if such act is treating another enterprise

discriminatively without justification and likely to restrain competition. For example, without justification, refusing membership to such an enterprise that by law must join a professional association before practicing.

Although the act of trade associations and other business groups does not constitute the concerted action as identified in Clause 3 of this Policy Statement, it is a violation of item 4, Article 20 of the Fair Trade Act, if such act is causing another enterprise to refrain from competing in price, or to take part in a merger, concerted action, or vertical restriction through coercion, inducement with interest or other improper means, and is likely to restrain competition. For example,

- (1) by denying the needed admission, causing the enterprise who applies for membership cannot but follow the price for goods made by the trade association or other business groups;
 - (2) by means of disclosing industry information to members relating to various types of operation cost, guiding members to adjust the price for goods or service fees so that not engaging in price competition;
 - (3) according to the price decided by the representative or the agent of the trade association or other business groups, informing or suggesting member to adjust price for goods or service so that not engaging in price competition;
 - (4) collecting deposits so as to preventing members from undercutting price so that members do not engage in price competition;
 - (5) demanding members to issue affidavits claiming not to do business with a particular counterpart or otherwise submitting for discipline, punishment or other improper means so that members do not engage in price competition; or
 - (6) causing members to deny doing business with a particular counterpart by issuing internal business guidance so that members take part in concerted actions.
6. Acts of a trade association or other business groups which generally do not constitute a violation of the Fair Trade Act:

- (1) assembling information relation to domestic and overseas industry, commerce and service market investigation, statistics, research and development trend and other industrial matters for members' reference ;.
- (2) providing vocational education and training, and seminars relating to research and development, business promotion, management skills and others;
- (3) conducting manufactures and sales adjustment measures following the guide of the agricultural authorities according to agricultural regulations;
- (4) carrying out the matters with governmental power as authorized by the competent authority of the business; or
- (5) causing members to abiding by laws and regulations by issuing self-discipline convention, code of ethics and other self-regulatory rules.

7. Legal effect for trade associations' and other business group's Violation of relevant provisions of the Fair Trade Act:

(1) Trade associations and other business groups:

A. For those in violation of Article 15 and Article 20 of the Fair Trade Act, the Commission may order them to cease or rectify the unlawful acts or take necessary corrective measures within a specified period and at the same time impose on such enterprises administrative fines no less than NT\$100,000 and no more than NT\$50,000,000. For those failing to cease, rectify the unlawful acts or take necessary corrective measures, the Commission may continue to order them to cease or rectify the unlawful acts or take necessary corrective measures within a specified period and each time impose administrative fines no less than NT\$200,000 and no more than NT\$100,000,000, until such enterprises have ceased, rectified the unlawful acts or taken necessary corrective measures.

B. Those in violation of Article 15 of the Fair Trade Act and failing to cease, rectify the unlawful acts or take necessary corrective measures after the Commission ordered them to cease, rectify the unlawful acts or take necessary corrective measures, or again engaging in the same or similar unlawful acts, will be subject to a 3-year or less prison sentence, detention or criminal fines up to NT\$100,000,000, or both.

C. Those in violation of Article 20 of the Fair Trade Act and failing to cease, rectify the unlawful acts or take necessary corrective measures after the Commission ordered them to cease, rectify the unlawful acts or take necessary corrective measures, or again engaging in the same or similar unlawful acts, will be subject to a 2-year or less prison sentence or detention or criminal fines up to NT\$50,000,000, or both.

(2) Members

A. With regard to trade associations or other business groups that are in violation of the Fair Trade Act, the Commission may act in line with Article 43 of the same law to impose a penalty on any member who participated in such violation.

B. If the member is able to demonstrate that it had no knowledge of the violation, did not participate in the mutual understanding, did not implement, or ended such violation prior to the investigation of the Commission, the member may not be punished.

8. These Policy Statements only illustrate certain types of conduct by trade associations or other business groups which may be in violation of the Fair Trade Act. The Commission shall make necessary supplementation or revision to rectify any deficiency found therein. When handling cases, the Commission will make its decision individually based on the concrete facts available in each case.