

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

Article	Description
<p>Article 1</p> <p>These regulations are enacted in accordance with Paragraph 3, Article 41 of the Fair Trade Law.</p>	<p>The legal basis of these Regulations</p>
<p>Article 2</p> <p>The serious violations stated in Paragraph 2, Article 41 of the Law refer to unlawful conduct that has seriously affected market competition and order.</p> <p>The central competent authority shall take the following into consideration to determine whether market competition and order has been seriously affected as stated in the preceding paragraph:</p> <p>(1) The scope and extent of the market competition and order affected;</p> <p>(2) The duration of the damage to market competition and order;</p> <p>(3) The market status of the enterprise in violation and the structure of the corresponding market;</p> <p>(4) The total sales and profits obtained from the unlawful conduct during the violation period;</p> <p>(5) The type of concerted action – joint product or service price decision, or quantity, trading counterpart or trading area restriction.</p> <p>Conduct leading to one of the following circumstances may be deemed serious violations:</p> <p>(1) The total product or service sales achieved during the violation period by a monopolistic enterprise or one of the participating enterprises in the concerted action exceeds NT\$100,000,000.</p> <p>(2) The total profits obtained from the unlawful conduct exceed the upper limit for administrative fines specified in Paragraph 1, Article 41 of the Law.</p>	<p>1. Terminology explanation</p> <p>2. Paragraph 1 defines “serious violations” as unlawful conduct of enterprises that has seriously affected market competition and order.</p> <p>3. In addition to dispossession of the gains from unlawful conduct, Paragraph 2 of Article 41 of the Fair Trade Law is also meant to serve as the legal basis for severe punishments against unlawful conduct. Therefore, it is stipulated in the paragraph that the factors considered in determination of administrative fines to be imposed include the scope and extent of the impact of the unlawful conduct, its duration, the market status of the concerned enterprise, the total sales and profits thereof obtained, and conduct by hard-core cartel.</p> <p>4. The profits obtained from unlawful conduct are often in direct proportion to the product or service sales achieved during the violation period – the larger the sales the higher the unlawful profits and the more serious the impact on market competition and order – hence, in addition to the factors to be considered as prescribed in Paragraph 2, Paragraph 3 stipulates that the central competent authority may regard any single enterprise making unlawful profits exceeding NT\$100,000,000 or proven as obtaining profits surpassing the upper limit for administrative fines set forth in Paragraph 1, Article 41 of the Law as in serious violation.</p>
<p>Article 3</p> <p>The total sales income of an enterprise in</p>	<p>1. Terminology explanation</p> <p>2. The amount of administrative fine can</p>

<p>the previous fiscal year stated in Paragraph 2, Article 41 of the Law refers to the total sales income of the enterprise in the fiscal year before the year in which the central competent authority finalizes the sanction.</p>	<p>vary when different time points – the beginning of the conduct, the end of the conduct and the time the sanction is determined – are adopted as the basis to define the “previous fiscal year.” Serious violations should be severely punished in order to deter enterprises from engaging in or continuing unlawful acts, but the addition of Paragraph 2, Article 41 of the Law is not meant to impose administrative fines beyond the affordability of enterprises and make it impossible for them to carry on their business. Therefore, it is stipulated that the central competent authority shall apply the time the sanction is determined as the basis in definition of the “previous fiscal year” and assess the financial capacity and fine affordability of enterprises accordingly.</p> <p>3. According to the Company Act and the Regulation on Business Entity Accounting Handling, branch companies are not independent subjects of right. They are subsidiaries controlled by the parent company and their annual profits and deficits are combined into those of the parent company. Therefore, the annual business revenue also includes the incomes of an enterprise’s domestic and overseas branches. Affiliates, on the other hand, are independent legal persons with their own company names and charters and conduct their own management. When involved in unlawful acts, they are sanctioned individually. Hence, the calculation of total sales income prescribed in this article does not include the incomes of affiliates.</p> <p>4. Reference was made to Paragraph 2, Article 23 of European Council Regulation No. 1/2003 and Sentence 2 of Paragraph 4, Article 81 of the German Act Against Restraints of Competition.</p>
<p>Article 4 Administrative fines to be imposed in accordance with Paragraph 2, Article 41 of the Law shall be determined based on the basic amount and adjustment factors.</p>	<p>1. It is stipulated that when determining the amount of administrative fine, the central competent authority shall calculate the basic amount first and then adjust and determine the final fine by taking adjustment factors into</p>

	<p>consideration.</p> <p>2. Reference was made to Points 9 to 11 of the European Council’s Guidelines on the method of setting fines (hereinafter referred to as the EU Fine Setting Guidelines) imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 and Point 3 of Germany’s Guidelines on setting of fines (hereinafter referred to as the German Fine Setting Guidelines) promulgated via the German Federal Cartel Office Notice No. 38/2006 on the imposition of fines (under Article 81 (4) sentence 2 of the German Act against Restraints of Competition.</p>
<p>Article 5 The Basic amount stated in the preceding article shall be thirty percent of the total product or service sales achieved during the violation period.</p>	<p>1. It is stipulated that thirty percent of the product or service sales achieved during the violation period shall be adopted as the basic amount for administrative fines.</p> <p>2. Reference was made to Points 19 and 21 of the EU Fine Setting Guidelines and Point 4 of the German Fine Setting Guidelines regarding the determination of the basic amount. Both the EU and Germany set the basic amount at a certain proportion of the total product or service sales achieved during the violation period and the proportion is not to exceed thirty percent of the said total sales. The fine regulation of the EU and Germany applies to all types of abuse of market power by monopolistic enterprises and concerted action. In comparison, these Regulations apply only to abuse of market power by monopolistic enterprises and concerted action considered in serious violation of the Fair Trade Law; therefore, the thirty percent basic amount has to be adopted to impose severe punishments against such unlawful acts.</p>
<p>Article 6 The adjustment factors stated in Article 4 include the reasons for administrative fine increase and reduction to be taken into consideration by the central competent authority when determining the administrative fine amount.</p> <p>The reasons for fine increase stated in the</p>	<p>1. Paragraph 1 specifies the concrete content of the adjustment factors, including the reasons for fine increase and reduction, for the central competent authority to adjust the basic amount accordingly when determining the fine in each case.</p> <p>2. As the competition law of various countries normally imposes heavier punishments on enterprises that organize</p>

<p>preceding paragraph include the following:</p> <ol style="list-style-type: none"> (1) The enterprise in concern has organized or encouraged the unlawful conduct. (2) The enterprise in concern has implemented supervision or sanctioning measures to ensure that the concerted action is upheld or executed. (3) The enterprise in concern has been sanctioned for violation of Article 10 or 14 of the Law within the past five years. <p>The reasons for fine reduction stated in Paragraph 1 include the following:</p> <ol style="list-style-type: none"> (1) The enterprise in concern has immediately ceased the unlawful act when the central competent authority began the investigation. (2) The enterprise in concern has shown real remorse and cooperated in the investigation. (3) The enterprise in concern has established compensation agreements with the victims or has taken remedial measures. (4) The enterprise in concern has participated in the concerted action under coercion. (5) Fine reduction is encouraged or approved by other agencies or can be granted in accordance with other laws. <p>Subparagraphs 1 and 2 of the preceding paragraph shall not apply to enterprises that have acquired the approval of the central competent authority to reduce the administrative fine in accordance with Article 35-1 of the Law.</p>	<p>(including through coercion, enticement or other illegitimate measures) or encourage unlawful conduct, have implemented supervision or sanctioning measures, or have made the same violation repeatedly, Paragraph 2 therefore also specifies the reasons for increase of administrative fines to provide the legal basis for increase of administrative fines.</p> <ol style="list-style-type: none"> 3. Fine reduction may be granted if the damage has been terminated or abated and the considerations are specified in Paragraph 3, including enterprises recognizing the unlawfulness of their conduct and discontinuing it, taking remedial measures such as reaching compensation agreements with the victims, showing real remorse and cooperating in the investigation, or having participated in the concerted action under coercion, or fine reduction is encouraged or approved by other agencies or can be granted in accordance with other laws. 4. It is specified in Paragraph 4 that fine reduction will not be repeated if the unlawful conduct already meets the requirements for leniency set forth in Article 35-1 of the Law. 5. Reference was made to Points 27, 28, 29 and 34 of the EU Fine Setting Guidelines and Points 14, 16 and 23 of the German Fine Setting Guidelines.
<p>Article 7 Administrative fines imposed according to Article 4 may not exceed ten percent of the previous fiscal year's total sales income of the enterprise to be sanctioned.</p>	<p>It is stipulated that administrative fines calculated according to Paragraph 2, Article 41 may not exceed ten percent of the total sales income of the enterprise in concern in the previous fiscal year as set forth in Paragraph 2, Article 41 of the Law.</p>
<p>Article 8 These Regulations shall enter into force on the day they are promulgated.</p>	<p>The date these Regulations shall enter into force is specified.</p>

