

# RULES CONCERNING INVESTIGATIONS AND HEARINGS BY THE FAIR TRADE COMMISSION

December 26, 2001  
Fair Trade Commission Rules No. 8 of 2001

(Amendment: June 20, 2002 (Fair Trade Commission Rules No. 4 of 2002))

The rules to amend the entirety of the Rules Concerning Investigation and Hearing by the Fair Trade Commission (Fair Trade Commission Rules No.5 of 1953) shall be established pursuant to the provision of Section 76 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947) as follows:

## **Rules Concerning Investigation and Hearing by the Fair Trade Commission**

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## **Chapter I General Rules**

### **Section 1 [Purpose and Definition]**

The proceedings of investigations and hearings of the Fair Trade Commission (hereinafter referred to as "Commission") shall follow these Rules and the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947. Hereinafter referred to as "the Act") Including where the Act is applied in Section 95-4 of the Fishery Industry Cooperative Association Law (Law No. 242 of 1948)), and Section 108 of the Law on Cooperative Association of Small and Medium Enterprises (Law No. 181 of 1949), the Act against Unjustifiable Premium and Misleading Representation (Law No. 34 of 1962) as well as the Cabinet Order concerning Designation of Investigator as stipulated in Subsection 2 of Section 46 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Cabinet Order No. 264 of 1953. Hereinafter referred to as "Cabinet Order Concerning Designation of Investigator"); provided, however, that the hearing procedure stipulated in Section 66 (1) of the Act and Section 10 (6) of the Act against Unjustifiable Premium and Misleading Representation shall be carried out as otherwise stipulated.

2. The terms used in these Rules that are the same as those used in the Act shall have the same meaning as the terms used in the Act.

### **Section 2 [Computation of Period]**

The computation of period shall be made according to the provisions of the Civil Code (Law No. 89 of 1896) concerning period.

2. If the last day of a period falls on any of the days mentioned in the items of Subsection 1 of Section 1 of the Law for Closed Days of the National Administrative Organs (Law No. 91 of 1988), the period shall expire at a day following the said last day.

### **Section 3 [Language]**

The Japanese language shall be used in the investigation and hearing proceedings.

2. When a person not versed in the Japanese language is required to make a statement, an interpreter shall be used to interpret.

#### **Section 4 [Method for Official Notice]**

The Commission may insert the official notice into an official gazette or newspaper. With respect to the official notice to be served in a foreign country, the Commission may notify that the official notice was served instead of inserting it into the official gazette or newspapers.

#### **Section 5 [Preparation of Documents]**

Unless otherwise specially stipulated, any document to be prepared for the proceedings of investigation and hearing shall be dated, signed and sealed.

2. When the document mentioned in the preceding subsection is a duplicate to be made by the Commission, the official who made the duplicate shall note that the duplicate does not differ from its original in a place contiguous to the concerned statement, shall sign and seal the duplicate, and shall impress a seal across it and the contiguous leaf or take similar action.

#### **Section 6 [Correction of Documents]**

No character shall be altered in preparing documents for the proceedings of an investigation and hearing. If any character is added, deleted or shown in the margin of a page, a seal shall be impressed on it for confirmation. In this case, any deleted character shall remain legible.

### **Chapter II Investigation**

#### **Division I General Process**

#### **Section 7 [Initiation of Investigation Procedure]**

The Director General of the Investigation Bureau of the General Secretariat shall, upon coming into contact with the incipient facts of a case, report to the Commission with any connection thereon, concerning whether it is necessary to proceed with an investigation.

2. In making the report mentioned in the preceding subsection, the following matters shall be stated as clearly as possible:
  - (1) Inciency

- (2) Synopsis of the facts of the case
  - (3) Applicable provisions of the Act
3. The Commission shall, with respect to a case that the Commission acknowledges as requiring the action stipulated in Section 46 (1) of the Act in the case of Subsection 1, designate an investigator and assign him to investigate said case pursuant to Subsection 2 of the Section and the Cabinet Order concerning Designation of Investigator.

### **Section 8 [Identification Card]**

The form of the identification card stipulated in Subsection 3 of Section 46 of the Act shall be as shown in Form No. 1.

### **Section 9 [Action Taken by Investigator]**

The investigator shall, when taking the measures stipulated in Section 46 (1) of the Act pursuant to the provision of Section 46 (2) of the Act., take measures by serving the document given in each of the following items, according to the classification described in each respective item.

- (1) When summoning and questioning persons concerned with the case or witnesses: the writ of appearance
  - (2) When ordering the persons mentioned in the preceding item to provide their view or submit a report, a writ of report
  - (3) When summoning experts for ordering the experts to provide expert testimony, a writ of expert testimony
  - (4) When ordering persons holding books, documents, and other materials to submit the said materials, a writ of submission
2. The documents described in the preceding subsection shall include the following matters, and each leaf of the documents shall bear a seal stamped across both it and the contiguous leaf.
- (1) Name of the party to be served
  - (2) Requested matters
  - (3) Date and place of appearance and submission
  - (4) Penal provisions of the Act in the event of default

### **Section 10 [Preparation of Record]**

The officials of the Commission shall, when preparing the investigation record for

the case mentioned in this Division pursuant to the provisions of Section 47 of the Act, state the date of preparation and the name of the bureau of the officials in the investigation record. The officials shall then sign and seal the investigation record.

2. When any character is deleted or shown on the margin of a page when preparing the investigation record as mentioned in the preceding subsection, the number of characters shall be stated in the investigation record.
3. Documents, photographs, and such other materials as deemed appropriate may be cited as references in the investigation record mentioned in Subsection 1, and may be attached to the record thereby making them part of the record.
4. Each leaf of the investigation record mentioned in Subsection 1 shall bear a seal stamped across it and the contiguous leaf.

#### **Section 11 [Record of Questioning]**

The investigator shall, when he has interrogated persons involved in a case, or witnesses in accordance with the provision of Section 46 (1) (i) of the Act pursuant to the provision of Section 46 (2) of the Act, prepare the record, read it to the deponent, or have the deponent peruse it, and ask the deponent if there is any mistake in the record. If the deponent makes a motion for any addition or deletion, the deponent's statement shall be stated in the record.

2. When the deponent affirms that the contents of the record mentioned in the preceding subsection are correct, he may be asked to sign and seal the record.
3. When the deponent is unable to provide a signature as mentioned in the preceding subsection, another person shall sign on behalf of the deponent. When the deponent cannot provide a seal, the deponent shall be fingerprinted. However, when another person signs on behalf of the deponent, that person shall state the reason in the record and sign and seal it.
4. If the deponent refuses to sign and seal the record as mentioned in Subsection 2, an entry in the record shall be made to that effect.

#### **Section 12 [Special Rules when Questioning Via an Interpreter]**

The investigator shall, when questioning persons involved in a case or witness using an interpreter, note the use of the interpreter in the interrogatory record and state that the investigator read the record to the person questioned using the interpreter.

2. The investigator may ask the interpreter to sign and seal the record mentioned in the preceding Subsection.

### **Section 13 [Record of Statement]**

When a person involved in a case or a witness makes a voluntary statement, and the official of the Commission deems it necessary, the official shall prepare a record of statement that shall record the statement.

2. The provisions of the preceding two sections shall be applied to the record mentioned in the preceding subsection.

### **Section 14 [Expert Testimony]**

The investigator shall, when he has instructed an expert to provide expert testimony in accordance with provision of Section 46 (1) (ii) of the Act pursuant to the provision of Section 46 (2) of the Act, have him report the process and result thereof with a written statement.

### **Section 15 [Record of Retention]**

The investigator shall, when he has retained any material provided in accordance with the provision of Section 46 (1) (iii) of the Act pursuant to the provision of Section 46 (2) of the Act, prepare the record for such retention.

2. The record mentioned in the preceding subsection shall incorporate the title of the case, the nature of the retained materials, the name, occupation and address of the owner of the retained materials and the person who provided the retained materials, and the date and place of retention.
3. A list showing the nature of the retained materials shall be attached to the record mentioned in Subsection 1.
4. A copy of the list shall be made available upon the request of the owner of the retained materials or a person who provided the retained materials.

**Section 16 [Return, or Temporary Return, of Retained Materials]**

1. Any retained material that is deemed to be unnecessary shall be returned without waiting for the closure of the case.
2. Any retained material may be temporarily returned upon the request of its owner or the person who provided it.

**Section 17 [Documents Submitted Voluntarily]**

The official of the Commission shall, when he deems it necessary when receiving books, documents and other materials that are provided voluntarily by persons involved in a case or witnesses, request the persons involved in the case or the witnesses to submit a document stating the name, occupation and address of the owner and person who provided the said materials, the list of the materials provided and the date of provision.

**Section 18 [Record of Inspection]**

When the investigator carried out an inspection as stipulated in Section 46 (1) (iv) of the Act pursuant to the provision of Section 46 (2) of the Act, he shall prepare a record of inspection.

2. The title of the case, the purpose, date, time and place of an inspection, the name and occupation of persons presented at the inspection, and the results thereof shall be stated in the record mentioned in the preceding Subsection.

**Section 19 [Motion for objection against action taken by the investigator]**

A person subject to one of the measures mentioned in the items of Section 46 (1) of the Act, which was taken by the investigator pursuant to the provision of Section 46 (2) of the Act, may, if he is aggrieved by said measure, make a motion for objection to the Commission in writing and stating the grounds for the motion, within one week of the date of being subject to the measure.

2. The Commission shall, if it recognizes that there are grounds for the motion for objection, order the investigator to withdraw, cancel or change the action against which the motion for objection was made, and notify the petitioner thereof.
3. The Commission shall, if it has rejected a motion for objection, give notice to the

petitioner to that effect. In this case, the reasons for the rejection shall be given.

**Section 20 [Investigation Report]**

The Director General of the Investigation Bureau of the General Secretariat shall, upon closing the investigation into a case, forthwith submit a report on the results to the Commission.

2. In the case of the preceding Subsection, an investigation report clearly stating the following matters shall be prepared for a case against which the investigator took action as mentioned in Section 46 (1) of the Act pursuant to the provision of Section 46 (2) of the Act.

- (1) Inciency
- (2) Investigational process
- (3) Synopsis of the facts of the case
- (4) Applicable provisions of the Act
- (5) Opinion of the investigator

**Division II Recommendation**

**Section 21 [Recommendation]**

The following matters shall be stated in the recommendation based on Section 48 of the Act, and a certified copy of the recommendation that has been signed and sealed by the chairman and the commissioners participating in the vote shall be served.

- (1) Facts and application of laws and ordinances
  - (2) Specific measures to eliminate acts in violation, or to ensure that acts in violation have been eliminated
2. When serving the recommendation as mentioned in the preceding subsection, a notice stating the following matters shall be attached.
- (1) Deadline for the notification of the acceptance or non-acceptance of the recommendation
  - (2) That the Commission will, where the recommendation has been accepted, issue a decision along the same lines as in the recommendation

**Section 22 [Notice of Acceptance or Non-Acceptance of Recommendation]**

Any person who was served the certified copy as mentioned in Subsection 1 of the preceding Section shall notify the Commission in writing of the acceptance or non-acceptance thereof by the deadline as designated by Subsection 2 (1) of the preceding Section.

2. The Commission may, when it recognizes that there are justifiable grounds, extend the deadline mentioned in Subsection 2 (1) of the preceding Section upon its own motion or upon application.

**Division III Payment order of surcharge**

**Section 23 [Notice before Payment Order]**

When an opportunity to state opinions or present evidence is given pursuant to the provision of Section 48-2 (4) of the Act, a document stating the matters mentioned in the following items shall be served to an entrepreneur or member entrepreneurs of a trade association.

- (1) The amount of surcharge in the payment order, and the basis of calculation, as well as the act of violation that is relevant to the surcharge
  - (2) The effect that opinions may be stated in writing and evidence may be presented to the Commission, with respect to the matters mentioned in the preceding item, and the deadline thereof
2. The Commission may, when it recognizes justifiable grounds, extend the deadline mentioned in Item 2 of the preceding subsection upon its own motion or upon application.

**Section 24 [Formality of Statement of Opinion, etc.]**

A person served with a document mentioned in Subsection 1 of the preceding section may state opinions and present evidence to the Commission by the designated deadline with respect to the matters mentioned in Item 1 of the subsection. In this case, if the statement is presented as evidence, it shall be done with a document signed and sealed by a deponent.

2. When presenting the evidence pursuant to the provision of the preceding subsection, the matter intended for proof must be clear.
3. Irrespective of the provision of Subsection 1, the Commission may, if it recognizes a particular necessity, have the person state opinions orally. In this case, the Commission shall nominate officials who hear opinions, and notify the person who will state the opinions of the date, time, and venue for stating opinions.

**Section 25 [Payment Order]**

The payment order pursuant to the provision of Section 48-2 (2) of the Act shall include the matters specified in the subsection, and be given by serving a certified copy of the surcharge payment order signed and sealed by the chairman and the commissioners participating in the vote.

2. When serving the certified copy described in the preceding subsection, a written notice stating that a request for initiation of the hearing procedure on the payment order may be presented shall be attached.

**Section 26 [Request for Initiation of Hearing Procedure]**

A person who intends to request the initiation of the hearing procedure in accordance with the provision of Section 48-2 (5) of the Act must, within thirty days of the date of arrival of the certified copy of the surcharge payment order, submit to the Commission two copies, including an original, of a written request for the initiation of the hearing procedure by using Form No. 2.

**Chapter III Initiation of Hearing Procedure**

**Section 27 [Decision on Initiation of Hearing]**

The decision on initiation of hearing pursuant to the provision of Section 49 (1) of the Act shall be made by serving the certified copy of the complaint that includes facts and the application of laws and ordinances, and is signed and sealed by the chairman and the commissioners participating in the vote for the decision.

2. The decision to initiate a hearing pursuant to the provision of Section 49 (2) of the Act shall be made by serving the certified copy of the complaint that includes the

following matters, and is signed and sealed by the chairman and the commissioners participating in the vote for the decision.

- (1) Act of violation that is relevant to the surcharge
- (2) Basis of calculation of the surcharge
- (3) Application of laws and ordinances

3. When serving the certified copy described in the preceding two subsections, a written notice including the following matters shall be attached.

- (1) Date and venue of the first hearing
- (2) That the respondent or the respondent's representative is requested to appear on the date of the hearing
- (3) Deadline for submission of an answer

#### **Section 28 [Change of Date of First Hearing]**

The Commission or the hearing examiner may, when it recognizes justifiable grounds, change the date and/or venue of the first hearing, or extend the deadline for the submission of an answer upon its own motion or upon application.

#### **Section 29 [Matters to Be Stated in Answer]**

The following matters shall be stated in an answer.

- (1) Name, or company name and address of the respondent
- (2) Name, or company name and address of the representative
- (3) Title of case
- (4) Admission or denial of facts
- (5) Plea by the respondent
- (6) Indication of any documents that may be attached to an answer

### **Chapter IV Hearings**

#### **Division I Commission, Hearing Examiner, and Persons in Hearings**

#### **Section 30 [Hearings Presided over by the Commission]**

When the Commission conducts hearings, the Commission may not do without the

presence of the chairman and two or more commissioners.

2. With respect the application of the provision of the preceding subsection, when the chairman is unable to fulfill his function, a person who shall represent the chairman as stipulated in Section 33 (2) of the Act shall be deemed the chairman.

### **Section 31 [Hearings Presided over by the Hearing Examiner]**

The Commission shall, when having opened a hearing it intends to have a hearing examiner conduct hearings pursuant to the provision of Section 51-2 of the Act, designate the hearing examiner in charge of the case in question, and inform the respondent or the respondent's representative of the name of the hearing examiner.

2. When the scope and extent of the hearing procedure to be carried out by the hearing examiner is limited, the name of the hearing examiner mentioned in the preceding subsection as well as the scope and extent of the hearing procedure to be carried out by the hearing examiner shall be reported to the respondent or the respondent's representative.
3. When more than one hearing examiner is carrying out the hearing procedure in the case of Subsection 1, one of the hearing examiners shall be appointed chief hearing examiner and shall preside over the hearing procedure, and the respondent or the respondent's representative shall be informed thereof. In this case, "chief hearing examiner" shall be read as "hearing examiner" mentioned in Section 33 (2), Section 40, Section 41 (1) and (3), Section 42, Section 43, Section 44 (1), (3) and (4), Section 50 (2), Section 55, Section 56 (1), Section 57, Section 58 (1), the first part of Section 64 (2), Section 67 (3), Section 70 (1), Section 71 (2), Section 72, Section 73, Section 74 (5), Section 75, Section 76 (1), (3), (4), and (6), Section 77 (3), Item 10 of Section 78, Section 79 and Section 92 (3).
4. When more than one hearing examiner is carrying out the hearing procedure mentioned in the preceding subsection, resolutions of the committee consisting of the hearing examiners shall be carried by a majority.

### **Section 32 [Hearing Examiner's Power]**

Hearing examiners shall exercise the power vested with the Commission with respect to hearings pursuant to the provision of Section 51-2 of the Act and this Regulation.

2. Hearing examiners shall execute their duties fairly, expeditiously, and independently.

### **Section 33 [Officials]**

The Commission shall have its officials perform tasks related to hearings.

2. The officials mentioned in the preceding subsection shall perform such tasks as the preparation, custody, and service of records or other documents at hearings pursuant to the instructions of the chairman or the hearing examiner.

### **Section 34 [Investigator]**

Investigators may be present at hearings, shall make factual and legal statements, shall call for the examination of evidence, or shall attend the examination of evidence, or shall carry out other necessary acts.

### **Section 35 [Representative]**

The powers of a representative who is an attorney or a corporation of attorneys shall be verified in writing.

2. The name of a bar association to which the representative belongs, and the address of his office, shall be given in the statement mentioned in the preceding subsection, and the scope and extent of his authority shall be clearly indicated thereon.
3. When the representative is a corporation of attorneys, the name of the attorney who is in charge of the case in question as a member of the corporation, the name of the bar association to which the attorney belongs, and the scope and extent of tasks (work) that each attorney can perform shall be stated clearly in the document mentioned in Subsection 1.
4. The respondent shall, when intending to obtain approval for the appointment of a person other than an attorney or a corporation of attorneys as the respondent's representative, submit to the Commission or the hearing examiner a statement in which the name, address and occupation of said person, and the person's relationship with the respondent, and such other matters sufficient for determining whether or not said person is eligible to act as representative are stated.
5. A document that clearly shows the authority and scope of authority of the representative shall be attached to the statement mentioned in the preceding subsection.

6. The Commission or the hearing examiner shall make a ruling on the application mentioned in Subsection 4.
7. The respondent shall, if he dismissed the representative, notify the Commission or the hearing examiner thereof in writing without delay.

### **Section 36 [Intervention]**

The Commission may, when it interrogates a respondent or a third party pursuant to the provision of Section 59 of the Act, do so in writing.

2. The Commission may have the hearing examiner conduct questioning as mentioned in the preceding subsection. In this case, the hearing examiner who conducts questioning shall submit a report on the results of the questioning to the Commission.
3. The Commission shall, where it rules out permission for a third party to intervene as a party, notify the respondent and the third party to that effect.

### **Section 37 [Acts of Intervenor]**

Intervenors may make factual and legal statements at hearings, or call for evidence, or perform other necessary acts.

## **Division II Date of Hearing and Preparation**

### **Section 38 [Hearing court]**

Hearings shall be held at the Commission's hearing court. However, the Commission or the hearing examiner may, as deemed necessary, designate a suitable venue for hearings of a given case.

### **Section 39 [Attendance at Hearings]**

Hearings presided over by the Commission on a fixed hearing date shall be held in the presence of the chairman, not less than two (2) commissioners, officials in charge of hearing administration, and investigators.

2. Hearings presided over by the hearing examiner on a fixed hearing date shall be held in the presence of the hearing examiner, officials in charge of the hearing administration and investigators.

3. The respondent or the respondent's representative shall appear on the hearing date.

**Section 40 [Notification of Non-Appearance of Respondent or Respondent's Representative]**

If unable to appear on the hearing date, the respondent or the respondent's representative shall notify the chairman or the hearing examiner thereof without delay, together with a clear reason.

**Section 41 [Designation of Hearing Date, Extension and Change]**

The second and subsequent hearing dates shall be designated by the chairman or the hearing examiner.

2. Notice of a hearing date served to the respondent or the respondent's representative shall include notification of the date and venue to appear, and other necessary matters; provided, however, that such notice may be made orally to those appearing on the hearing date

3. The chairman or the hearing examiner may, for good cause shown, extend or change the hearing date upon its own motion or upon application.

**Section 42 [Presiding over Hearings and Maintaining Order]**

Hearings on the hearing date shall be presided over by the chairman or the hearing examiner.

2. The chairman or the hearing examiner may order necessary action or take measures to maintain order in the hearing court.

**Section 43 [Limitations of Argument]**

The chairman or the hearing examiner may reject any question or statement by the investigator, or by the respondent or the respondent's representative if said question or statement merely constitutes repetition of earlier questions or statements, or is irrelevant to the issue of the case, or if the chairman or the hearing examiner deems it particularly necessary.

**Section 44 [Explanation and Questions]**

The chairman, or the hearing examiner may question the investigator and the

respondent or the respondent's representative, or cause them to testify on any matter of fact and law to clarify the case on the hearing date or on dates other than the hearing date.

2. Commissioners and hearing examiners other than the chairman and the chief hearing examiner may take the measures mentioned in the preceding subsection by notifying the chairman or the chief hearing examiner thereof.

3. When the investigator, or the respondent or the respondent's representative is unable to understand a statement made by the other party, he may ask the chairman or the hearing examiner to put a question to him, or may directly question the other party with the consent of the chairman or the hearing examiner on the hearing date or dates other than the hearing date.

4. The chairman or the hearing examiner shall, when he took measures pursuant to the provision of Subsection 1 or 2 for a matter that may cause a major change in the method for prosecution or defense on dates other than the hearing date, notify the other party of the details thereof.

#### **Section 45 [Preparatory Proceedings]**

The Commission or the hearing examiner may, if deemed necessary, carry out preparatory proceedings by requesting the attendance of the investigator and the respondent or the respondent's representative, to arrange points of dispute and evidence. If deemed necessary, the document may instead be submitted by the investigator or by the respondent or the respondent's representative, to supplement the above method.

2. When preparatory proceedings are carried out, the official in charge of the hearing administration shall prepare a record. The results of proceedings and other necessary matters of each date shall be stated in the record which shall be signed and sealed by the official in charge of the hearing administration and which shall be confirmed with the seal of the chairman or the hearing examiner.

3. The investigator and the respondent or the respondent's representative shall state the result of the preparatory proceeding at the hearing date.

**Section 46 [Opening Procedure]**

The investigator shall state the complaint at the beginning of the hearing procedure.

2. The respondent or the respondent's representative may, following the statement of the investigator pursuant to the preceding subsection, state his opinion in accordance with a written answer.

**Section 47 [Statement of Synopsis of a Case]**

The investigator shall state the synopsis of a case after the completion of the procedure mentioned in Subsection 1 of the preceding section.

**Section 48 [Examination of Evidence]**

The examination of evidence shall be commenced after the procedure mentioned in the preceding section has been duly carried out.

2. The examination of evidence shall be conducted on the hearing date unless otherwise provided for in this Regulation.

**Section 49 [Disclosure of Opinion of Investigator]**

Upon completion of the examination of evidence, the investigator may state his opinion about facts and the application of laws and ordinances.

2. The respondent or the respondent's representative shall be given an opportunity to state opinions at the end.
3. When the respondent or the respondent's representative fails to appear without due cause on the date mentioned in the preceding subsection, the hearing procedure may be completed without giving another opportunity to the respondent or the respondent's representative to state opinions.

**Section 50 [Application for Closed Hearing]**

Application for a closed hearing shall be made by clearly stating the scope and extent of closed hearing, the grounds for the closed hearing and the period.

2. The chairman or the hearing examiner shall, when the hearing is held in camera, make a statement to that effect and provide grounds.

**Section 51 [Separation, Consolidation, Termination and Reopening of Hearing]**

The Commission or the hearing examiner may, when deemed necessary, separate, consolidate or terminate hearings, or reopen hearings that have been terminated, upon its own motion or upon application.

**Section 52 [Motion for Objection against Instructions on Hearing Procedure]**

The investigator, or the respondent or the respondent's representative may, if it is claimed that measures (excluding measures mentioned in each item of Section 46 (1) of the Act that were taken by the hearing examiner pursuant to the provision of Section 51-2 of the Act) relating to the hearing taken by the hearing examiner are in violation of laws and ordinances, or are remarkably unreasonable, without delay make a motion for objection to the Commission with a written document stating the grounds for the motion.

2. The provisions of Section 19 (2) and (3) shall be applied to cases mentioned in the preceding subsection. In this case, "investigator" shall be read as "hearing examiner."

**Division III Collection of Evidence**

**Section 53 [Application for Order for Submission of Documents and Other Materials]**

An application for the order for the submission of documents and other materials shall be made in writing by clearly stating:

- (1) The representation of the documents and other materials,
  - (2) The purpose of the documents,
  - (3) The party in possession of the documents and other materials,
  - (4) The facts to be proved, and
  - (5) The reason and necessity for the application
2. The Commission or the hearing examiner shall, when it is recognized that there is a reason for the application mentioned in the preceding subsection, order the party in possession of the documents and other materials to submit them.
  3. The Commission or the hearing examiner may, if deemed necessary, retain the submitted documents and other materials.

**Section 54 [Application for Spot Inspections]**

An application for a spot inspection shall be made in writing by clearly stating the purpose, the place and the necessity for the inspection.

2. The Commission or the hearing examiner shall, when it is recognized that there is a reason for the application mentioned in the preceding subsection, conduct the inspection.
  
3. The chairman or the chief hearing examiner may, when it is deemed reasonable, have one of the commissioners or hearing examiners of the committee conduct the inspection mentioned in the preceding subsection.

**Section 55 [Testimony of an Expert]**

The chairman or the hearing examiner shall, when he has ordered an expert to provide expert testimony in accordance with Section 46 (1) (ii) of the Act pursuant to the provision of Section 51-2 of the Act, have the expert report the process and result thereof with a written statement.

**Section 56 [Records of Retention]**

The chairman or the hearing examiner shall, when he has retained any article provided in accordance with Section 46 (1) (iii) of the Act pursuant to the provision of Section 51-2 of the Act, prepare a record for the retention.

2. The provisions of Section 15 (2) to (4) and Section 16 shall be applied in the case of the retention as mentioned in the preceding subsection.

**Section 57 [Voluntary Submission of Documents]**

The chairman or the hearing examiner shall, if deemed necessary when receiving documents and other materials submitted voluntarily, request the provider of the documents or other materials to submit a document indicating the party in possession holder of the submitted materials, the name, occupation and address of the party providing the materials, the kind of the submitted materials and the date of submission.

**Section 58 [Inspection Records]**

When the chairman or the hearing examiner conducts an inspection as stipulated in

Section 46 (1) (iv) of the Act pursuant to the provision of Section 51-2 of the Act, he shall prepare an inspection record.

2. The provision of Section 18 (2) shall be applied to the case of the preceding subsection.

**Section 59 [Motion for Objections against Measures Taken by the Investigator]**

The provision of Section 19 shall be applied to the measures mentioned in each item of Section 46 (1) of the Act taken by the hearing examiner pursuant to the provision of Section 51-2 of the Act. In this case, “investigator” shall be read as “hearing examiner.”

**Division IV Examination of Evidence**

**Section 60 [Application for Examination of Evidence]**

The investigator and the respondent or the respondent’s representative may request an examination of evidence.

2. The Commission or the hearing examiner may, when deemed necessary, conduct examination of evidence upon its own motion.

**Section 61 [Ruling on Examination of Evidence]**

When an application for evidence has been made, the investigator and the respondent or the respondent’s representative may state their opinions about the acceptance or rejection of the evidence.

2. The Commission or the hearing examiner may not accept evidence that was introduced by the investigator, the respondent or the respondent’s representative and that is deemed unnecessary. In this case, the reason for rejecting the evidence shall be indicated.

3. The Commission or the hearing examiner may, when an examination of the evidence poses an obstacle of indefinite duration, forgo the examination.

**Section 62 [Order of Application for Evidence]**

The investigator shall apply for evidence deemed necessary for hearing the case at the start of the examination of the evidence.

2. The respondent or the respondent's representative may apply for evidence that is deemed necessary for hearing the case after the application mentioned in the preceding subsection.

**Section 63 [Written Application for Evidence]**

Application for evidence shall be made by stating in writing the evidence and the matters the evidence is intended to prove.

**Section 64 [Examination of Evidence on Dates other than the Hearing Date]**

The Commission or the hearing examiner may, when deemed necessary, examine the evidence on dates other than the hearing date. In this case, the Commission or the hearing examiner shall give an opportunity for the investigator and the respondent or the respondent's representative to be present at the examination.

2. The Chairman or the hearing examiner shall, when conducting an examination of the evidence as mentioned in the preceding subsection, prepare a record. The record shall state the results of the examination of the evidence and other necessary matters, and be signed and sealed by the official in charge of the administration of hearing. The record shall bear the seal of the chairman or the hearing examiner as confirmation.
3. The record mentioned in the preceding subsection shall be presented on the date of the hearing.
4. The chairman or the chief hearing examiner may, when deemed necessary, have one of the commissioners or the hearing examiners of the committee conduct the examination of the evidence as mentioned in Subsection 1. In this case, the chairman or the chief hearing examiner shall notify the investigator and the respondent or the respondent's representative of the name of the commissioner or the hearing examiner who is conducting the examination.

**Section 65 [Timing for the Submission of Documents and Other Materials]**

Documents to be used in the questioning of witnesses, experts and the respondent, excluding documents used as evidence to argue the reliability of the statement of witnesses, experts and the respondent, shall be submitted well in advance of the start date for questioning witnesses, experts and the respondent. However, when it is not possible to submit the originals of the documents, a copy of the documents may be

submitted.

**Section 66 [Application for the Interrogation of Witnesses]**

An application for the questioning of witnesses shall be made by clearly stating the name, address and occupation of the witnesses, the matters to be covered in the questioning and the need for the questioning.

2. An application for questioning of the respondent himself or herself shall be made by clearly stating the matters to be covered in the questioning and the need for the questioning.

**Section 67 [Application for the Examination of Documents]**

An application for the examination of documents shall be made by submitting the relevant documents, or by applying for submitting from the person in possession of the documents.

2. An application for the examination of documents through the submission of the documents shall be made by clearly stating the title of the documents and the purpose of proof, except where these are clearly stated in the documents.
3. A submission of documents may, if approval has been obtained from the chairman or the hearing examiner, be achieved by means of copies of the documents in lieu of the originals.

**Section 68 [Application for Inspection]**

An application for examination of evidence by means of an inspection shall be made by stating the purpose and necessity thereof.

**Section 69 [Application for Expert Proof]**

An application for expert proof shall be made by clearly stating the matters about which an expert will be testifying and the need for the expert proof.

**Section 70 [Subpoenas]**

Subpoenas issued to witnesses shall include the following information, and shall be served under the signature and seal of the chairman or the hearing examiner.

- (1) Date, time and place that the witness is to appear,
- (2) Name of the case,
- (3) Matters to be covered in the questioning,
- (4) Legal penalty for a failure to appear, and
- (5) Any other pertinent matters.

2. The provision of the receding subsection shall be applied to subpoenas issued to experts or to the respondent himself or herself.

3. If a witness, expert or the respondent himself is in court during the hearing, he may, notwithstanding the preceding two subsections, be immediately questioned, or be caused to give expert witness.

#### **Section 71 [Separate Interrogation]**

A witness, expert, or the respondent himself shall be questioned separately.

2. The chairman or the hearing examiner, if other witnesses or experts who are to be subsequently questioned are in court during the hearing, shall instruct them to leave the room. However, this shall not apply if it is deemed necessary for the witnesses or experts to remain.

#### **Section 72 [Confrontation]**

The chairman or the hearing examiner may, when deemed necessary, instruct the respondent to confront witnesses or experts.

#### **Section 73 [Identification]**

The chairman or the hearing examiner shall first check the identification of witnesses, experts and the respondent himself.

#### **Section 74 [Oath]**

An oath shall be taken prior to questioning.

2. The oath shall be in the form of a statement.

3. The oath for witnesses shall be such a statement that he hereby swears to tell the truth, the whole truth and nothing but the truth.

4. The oath for experts shall be such a statement that he hereby swears to provide expert testimony in a conscientious and faithful manner.
5. The chairman or the hearing examiner shall cause a witness or expert to read the oath aloud, and to sign and seal it.
6. When a witness or expert cannot sign an oath as mentioned in the preceding subsection, another person shall sign on behalf of the witness or expert. When a witness or expert cannot seal an oath, he shall be fingerprinted. However, where another person signs an oath on behalf of a witness or expert, the person shall state the reason in the oath and sign and seal it.
7. The oath shall be administered solemnly, with everybody in the court standing.

**Section 75 [Warning]**

The chairman and the hearing examiner shall notify a witness or expert who has taken an oath prior to questioning that a false statement or expert testimony shall be punished pursuant to the provisions of Section 92-2 of the Act, and that the refusal to provide a statement or expert testimony without justifiable reason shall be punished pursuant to the provisions of Section 94-2 of the Act.

**Section 76 [Procedure for Interrogating Witnesses]**

The investigator and the respondent or the respondent's representative may, upon notifying the chairman or the hearing examiner, question witnesses, experts and the respondent himself. In this case, when the questioning of witnesses, experts or the respondent himself has commenced subject to a request made by the investigator or the respondent or the respondent's representative, the person who made the request shall first question them.

2. The chairman, the commissioners or the hearing examiner may question the witnesses, experts or the respondent himself after the completion of the questioning as mentioned in the preceding subsection.
3. The chairman or the hearing examiner may, when deemed appropriate, change the order of questioning as mentioned in the preceding two subsections, after listening to

the opinions of the investigator and the respondent or the respondent's representative.

4. The chairman or the hearing examiner may at any time, when deemed necessary, question the witnesses, experts or the respondent himself in addition to the questioning pursuant to Subsection 2.
5. The commissioner and hearing examiner other than the chief hearing examiner may, upon notifying the chairman or the chief hearing examiner, question the witnesses, experts or the respondent himself.
6. Witness and experts may not make statements based on documents unless they have the approval of the chairman or hearing examiner.

#### **Section 77 [Restrictions on Questions]**

Questions shall be asked in a particular and specific manner as possible.

2. The investigator and the respondent or the respondent's representative shall not ask the following questions. However, this restriction shall not apply to the questions mentioned in Items 2 to 5 if there is a justifiable reason.

- (1) Questions to insult or embarrass witnesses, experts or the respondent,
- (2) Leading questions,
- (3) Questions that are same as a question that has an already been asked,
- (4) Questions irrelevant to the points of dispute, and
- (5) Questions requesting the statement of an opinion

3. The chairman or the hearing examiner may, when a question conflicts with the provisions of the preceding subsection, limit the question on its own motion or on application.

### **Division V Protocol for Hearings**

#### **Section 78 [Protocol for Hearings]**

Officials in charge of administering the hearing shall prepare a record for every hearing date. This record shall include the following information, and shall be signed and sealed

by the official in charge of administering the hearing. The record shall bear the seal of the chairman or the hearing examiner as confirmation.

- (1) Date of the hearing,
- (2) Name and official title of the chairman and commissioners, the hearing examiners, officials in charge of administering the hearing, the investigator who attended the hearings and name of the respondent or the respondent's representative, the stenographer and the interpreter attending the hearings,
- (3) If the respondent or the respondent's representative does not appear, a statement to that effect and the reason thereof,
- (4) If the hearing is closed to the public, a statement to that effect and the reason thereof,
- (5) The name of witnesses and experts questioned, and if they did not take an oath, a statement to that effect, and the reason thereof,
- (6) Request for examination of evidence or other applications,
- (7) A summary of statements made by the investigator or the respondent or the respondent's representative on facts and law, as well as a summary of statements and the questioning of witnesses, experts or the respondent (or a reference to stenographic records or documents as a substitute for the summaries),
- (8) The title of the documents and other materials examined,
- (9) Rulings of the Commission, the chairman or the hearing examiner, and other matters, and
- (10) Matters ordered for inclusion by the chairman or the hearing examiner.

#### **Section 79 [Citations in the Protocol]**

In the record mentioned in Sections 45 (2), 58, or 64 (2) or the preceding section, a reference to documents, photographs and other materials as deemed proper by the chairman or the hearing examiner may be made a part of the record as an attachment thereto.

#### **Section 80 [Stenographic Records]**

A stenographer attending the hearings shall prepare a stenographic record at every hearing, and shall submit it to the Commission or the hearing examiner after signing and sealing the record.

2. The chairman or the hearing examiner shall confirm the stenographic record

mentioned in the preceding subsection and affix his seal.

## **Chapter V Decision**

### **Division I Consent Decision**

#### **Section 81 [Application for Consent Decision ]**

The respondent may, at any time after the decision on the initiation of the hearing, apply for a consent decision as stipulated in Section 53-3 of the Act.

2. During the hearing by the hearing examiner, the application mentioned in the preceding subsection shall be made through the hearing examiner.
3. The hearing examiner shall submit to the Commission the application mentioned in the preceding subsection together with his opinion.

### **Division II Hearing Decision**

#### **Section 82 [Preliminary Decision ]**

The hearing examiner shall, after the completion of hearings, make a preliminary decision without delay. The hearing examiner shall submit it to the Commission together with the record of the case, and serve a copy of it on the investigator and the respondent or the respondent's representative.

#### **Section 83 [Matters Stated in Preliminary Decision ]**

Matters stated in the preliminary decision shall include the matters mentioned below according to their respective classifications as mentioned in the following items.

- (1) When it is considered reasonable to make a decision in accordance with the provisions of Section 54 (1) or (2):  
The measures to be ordered, as well as the facts, evidence, and application of laws and ordinances,
- (2) When it is considered reasonable to make a decision in accordance with the provisions of Section 54 (3) of the Act (excluding the case mentioned in the next item):

Words to that effect, as well as facts, evidence and application of laws and ordinances,

- (3) When it is considered that an act under the provisions of Section 54 (1) of the Act or a monopoly did not exist:

Words to that effect and the reason thereof,

- (4) When it is considered reasonable to make a decision in accordance with the provisions of Section 54-2 (1) of the Act:

The amount of the surcharge ordered to be paid, as well as the facts, the basis for calculating the surcharge, evidence and the application of laws and ordinances

2. The hearing examiner shall sign and seal the preliminary decision.
3. When a hearing examiner is unable to sign and seal the preliminary decision due to a problem, another hearing examiner shall sign and seal the preliminary decision by noting the reason thereof.

#### **Section 84 [Motion for Objection against the Preliminary Decision ]**

The investigator or the respondent or the respondent's representative may make a motion for objection to the Commission in writing within two weeks of the date of receiving a copy of the preliminary decision.

#### **Section 85 [Proposed Statement ]**

The respondent or the respondent's representative shall, if he intends to make a proposal of statement in accordance with the provisions of Section 53-2-2 of the Act, submit to the Commission a document stating the intent and a summary of the statement within the period mentioned in the preceding section.

2. If the proposal of statement pursuant to the preceding subsection has been made, the Commission shall, without delay following the expiry of the period mentioned in the preceding subsection, designate a date for hearing the statement. The Commission shall also serve a written notice to the respondent or the respondent's representative that indicates the date, time, place and other necessary information.

#### **Section 86 [Holding a Hearing of the Statement ]**

The respondent or the respondent's representative shall, at the hearing of the statement, make a statement based on the document submitted pursuant to the provision of

Subsection 1 of the preceding section.

2. For the hearing of statement, an official designated by the Commission shall prepare a record stating a summary of the stated opinion and other necessary matters and sign and seal. The chairman shall seal the summary.
3. When the respondent or the respondent's representative fails to appear on the date mentioned in Subsection 1 without due reason, the proposal for the statement shall be deemed to be withdrawn.
4. The provisions of Section 30, Section 40, Section 41 (3) and Section 42 shall be applied to the hearing of the statement.

**Section 87 [Decision Based on Preliminary Decision ]**

After the period mentioned in Section 84 has expired (and after an opportunity is provided to make a statement if a proposal of statement was made in accordance with the provisions of Section 53-2-2 of the Act), the Commission may forthwith render a decision having the same content as that of the preliminary decision, if the preliminary decision is deemed appropriate. The decision may be rendered after examining the preliminary decision on the basis of the record of the case submitted in accordance with the provisions of Section 82, the written motion for objection submitted in accordance with the provisions of Section 84 and the hearing of statement made in accordance with the provision of the preceding section

2. As a result of the examination mentioned in the preceding subsection, the Commission may, if it deems that the motion for objection or the statement is supported by reason, or otherwise deems necessary, render a decision that differs from the preliminary decision. Alternatively, the Commission may hold hearings by itself in respect to the case, or may order the hearing examiner to reopen the hearings with instructions on points needing further examination.

**Section 88 [Reopening of Hearings ]**

The Commission shall, when it has ruled that it will hold the hearings by itself or that it will order the hearing examiner to reopen the hearings in accordance with the provision of Subsection 2 of the preceding section, prepare a written ruling and serve its copy on the respondent or the respondent's representative.

**Section 89 [Decisions ]**

If a decision is rendered pursuant to the provisions of Section 54 of the Act (excluding the case as mentioned in the following subsection) or if a decision is rendered pursuant to the provisions of Section 54-2 (1) of the Act, the text of the order and the evidence must be stated in the decision, in addition to the matters provided in Section 57 of the Act.

2. If a decision is rendered pursuant to the provisions of Section 54 (3) of the Act in deeming that, up to the time of the opening of hearings, any act mentioned in Subsection 1 of the said section, or the fact of a monopoly situation, did not exist, the text of the order and the reasons must be stated in the decision.
3. If a decision is rendered pursuant to the provisions of Section 48 (4) of the Act, or Section 53-3 of the Act, the text of the order must be stated in the decision in addition to the matters as mentioned in Section 57 of the Act.
4. If a decision is rendered pursuant to the provisions of Section 49 (2) of the Act, the text of the order and the reasons must be stated in the decision.
5. A certified copy of the decision shall be served on the respondent or the respondent's representative.

**Section 90 [Hearings for Cases Held in Remand ]**

If the case has been held in remand in accordance with the provisions of Section 81 (3) or Section 83 of the Act, the Commission shall forthwith set a hearing date.

2. The Commission may, if it deems it unnecessary to hold hearings when the case has been held in remand pursuant to the provisions of Section 83 of the Act, forthwith render a decision.
3. The Commission may, when deemed appropriate, have the hearing examiner preside over hearings to be held after the case has been held in remand as mentioned in Subsection 1 above.

**Chapter VI Supplementary Rules**

**Section 91 [Notice to Reporting Person ]**

The notice pursuant to the provisions of Section 45 (3) of the Act shall be served where the report mentioned in Section 4 (1) was made with a document stating the matter mentioned in each of the following items.

- (1) The personal name, company name and address of a reporting person,
- (2) The name of a person who has been committing, or committed, an act considered a violation of the provisions of the Act, and
- (3) Details of the activity, time, place and other facts of an act considered a violation of the provisions of the Act.

2. The notice shall be served as provided in the preceding subsection, where a report including the matters as mentioned in each item of the preceding subsection, which is transmitted using an electronic information processing organization, is indicated clearly in documents by using computers including their peripheral devices and other equipment used by the Commission.

3. The notice mentioned in Subsection 1 shall, in cases mentioned in each of the following items, be served using documents stating the relevant information. However, where the notice mentioned in Item 1 or Item 2 is served for cases relating to a similar report, no subsequent notice shall be served.

- (1) When the decision was made on the case concerned,
- (2) When an order for payment was issued for the case concerned, excluding where the hearing for the case relating to the order for payment was initiated,
- (3) When measures for elimination were taken for the case concerned, excluding where the hearing for the case relating to the measures for elimination was initiated,
- (4) When the hearing for the case concerned was initiated, and
- (5) When any of the measures mentioned in the preceding items were not taken for the case concerned.

4. In the documents mentioned in the preceding subsection, any matter may be stated where it is deemed appropriate. In addition, matters to be stated pursuant to the provisions of the preceding subsection may be stated.

### **Section 92 [Submission of Documents by Facsimile]**

The documents to be submitted for the investigation procedure and the hearing, excluding the following documents, may be submitted using facsimile.

- (1) Documents to be submitted based on the measures as mentioned in each item of Section 46 (1) of the Act,
  - (2) Written notice on whether the recommendation is accepted,
  - (3) Written opinion on the notice before an order for payment,
  - (4) Written request for initiation of the hearing,
  - (5) Written motion for objection against measures taken by the investigator or the hearing examiner,
  - (6) Written application for consent decision,
  - (7) Written motion for objection against a preliminary decision, and
  - (8) Documents proving authorization or the authority of the representative necessary for the hearing and other documents proving important matters for the hearing.
2. When a document is submitted using facsimile, the document shall be deemed to have been submitted to the Commission when the Commission receives it.
3. The chairman, the investigator or the hearing examiner may, when he deems necessary in the case mentioned in the preceding subsection, have the person who submitted the document submit the original document used for transmission.

### **Section 93 [Decision relating to corrections ]**

When there is a clear error, including a transcript error, in the recommendation, the payment order of surcharge, the complaint or the decision, the Commission may make a decision to correct the error upon its own motion or upon application.

2. A motion for an objection against the decision for correction may be made in writing to the Commission within two weeks of the date the decision was served.
3. The Commission shall, if it turns down a motion for objection as mentioned in the preceding subsection, notify the petitioner thereof.