

Standards on the Application of Article 46 of the Fair Trade Law

Stipulated and promulgated by Order Kung Fa Tu No. 10515605372 on August 4, 2016

1. These Standards are adopted by the Fair Trade Commission (hereinafter referred to as “the Commission”) to guide the handling of cases concerning the application Article 46 of the Fair Trade Law (hereinafter referred to as “the Law”).
2. Standards on the application of Article 46 are stated as follows,
 - (1)When an enterprise’s conduct with respect to market competition is not prohibited by the Law: Article 46 is not applicable to such conduct.
 - (2)When an enterprise’s conduct with respect to competition is prohibited by both of the Law and other laws: It is an issue of concurrence of laws and Article 46 is not applicable to such conduct. The specific individual cases shall be independently determined in accordance with the principles of the special law takes precedence over the general law in order to decide which law shall apply.
 - (3) When an enterprise’s conduct with respect to competition is prohibited by the Law but is adopted in accordance with other law, regulation, or regulatory order: Article 46 is applicable to such conduct.

The Commission will, in accordance with the provision of Paragraph 2, Article 6 of the Law, coordinate with other governmental agencies with respect to the circumstances specified in (2) and (3) of the above paragraph.

3. To ascertain that the Law is the basic economic law, if an enterprise’s conduct with respect to market competition is prohibited by the Law while such activity is conducted according to other laws or regulatory orders, in principle the Law shall have precedence over other laws (and regulatory orders). Only when such law or regulatory order does not conflict with the legislative purposes of the Law, shall such law or regulatory order take precedence over the Law.
4. The term “the legislative purpose of the Law” stipulated in Article 46 refers to maintaining trading order, protecting consumers' interests, ensuring free and fair competition, and promoting economic stability and prosperity as per Article 1 of the Law.
5. In determining whether the interpretation and enforcement of other laws or regulatory orders contravene the legislative purpose of the Law, the following factors shall be taken into account :
 - (1) the enactment, amendment, enforcement of other laws or regulatory orders
 - A.whether the legislative purposes of the Law has been taken into consideration at the time of or in the process of amendments of rules and regulations;
 - B. the reason for the imposition of regulatory controls by the competent authority responsible for the regulation of the industry. For example, upon reviewing and examining at its discretion, the competent authority decides there are justifiable reasons that the industrial policy should have priority over the competition policy;

C. whether the competent authority responsible for the regulation of the industry has exercised appropriate and necessary oversight on the area which is exempt from the application of the Law and whether there are other means, as much as they can, of ensuring market competition, such as the periodic review and assessment on the effectiveness of regulatory controls.

(2) relevant market competition

A.competition means: whether the enterprise uses the price, quantity, quality, service or any other terms as a means of market competition;

B. market Scope: look into conditions such as cause of action, commodity features, industrial characteristics, information attributes and other factors of the individual case at issue, as well as matters such as demand substitution and supply substitution;

C.number of competitors and market performance: whether the competitors participating in the market have a considerable number of enterprises, and should also take into account the market performance;

D. market concentration: whether the concentration of the relevant market is conducive to the state of competition;

E.entrance barriers of the market: whether the existence of barriers to entry into the relevant market is conducive to the state of competition;

F.economic efficiency: whether the productivity, configuration efficiency and innovation efficiency of the market can be improved;

G.consumer benefits: whether the overall consumer welfare can be effectively improved;

H.transaction costs: whether the impact of transaction costs can be reduced.

(3) Other circumstances related to the legislative purpose of the Law: examples often seen in practice such as cases involving a natural monopoly in a specific industry. Because the most efficient allocation result of resources cannot be achieved through market competition in such industry, the price control mechanism implemented under provisions of other laws can be regarded not contravening the legislative purpose of the Law.

6. The procedure for handling cases involving the application of Article 46 is illustrated as attached.