

## **Fair Trade Commission Disposal Directions (Policy Statements) on Distribution Industry**

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Promulgated by Order (90) Kung Yi Tzu No. 03656 on December 5, 2001  
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promulgated by Order (94) Kung Fa Tzu No.0940006970 on August 26, 2005  
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- 1.** Distribution enterprises play a commodity intermediary role between the upstream supply manufacturers and consumers. By dominating the marketing channels, these enterprises directly or indirectly affect the upstream suppliers, market competitors and downstream consumers. In view of the distribution enterprises' importance on market competition, the Fair Trade Commission (hereinafter referred to as "the Commission") has gathered and analyzed various types of actions by distribution enterprises that may violate the Fair Trade Law and the Policy Statements are stipulated accordingly. The Policy Statements are intended to help related enterprises avoid violating the Law and at the same time to serve as a reference for handling cases by this Commission in the future.
- 2.** Terms used in the Policy Statements are defined as follows,
  - (1)"Distribution enterprises" refer to hypermarkets, convenience stores, supermarkets, department stores, consumer cooperatives, drugstores and other enterprises engaged in general merchandise selling businesses.
  - (2)"Additional fees" refers to various costs, in addition to the payments on the sales of products or goods, that distribution enterprises demand from the suppliers, deduct from the rebates, or ask the suppliers to bear in other ways.
- 3.** The relevant market definition for distribution enterprises shall be reviewed in accordance with "Principles of the Fair Trade Commission Regarding the

Definition of Relevant Markets”.

4. Distribution enterprises should submit a merger notification to the Commission prior to the merger if the circumstance, as described in Paragraph 1, Article 10 and either one of the subparagraphs set forth in Paragraph 1, Article 11 of the Fair Trade Law, is present, provided that the proposed merger does not trigger any of the exemptions as described in Article 12 of the Fair Trade Law.

The thresholds and calculation of sales amount regarding the merger notification shall be reviewed under the Commission’s “Thresholds and Calculation of Sales Amount which Enterprises of a Merger shall file with the Fair Trade Commission”. The cases of distribution enterprises’ merger notifications shall be reviewed under “Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings”.

5. If distribution enterprises, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprises jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods and services, etc., and thereby to restrict each other's business activities which would affect the market function of production, trade in goods, or supply and demand of services, such conduct is deemed as the concerted action prohibited by the Fair Trade Law. Moreover, the act of a trade association to restrict activities of distribution enterprises by means of its charter, resolutions of a general meeting of members or a board meeting of directors or supervisors, or any other means, is also deemed as the concerted action.

The Fair Trade Law regulates concerted actions by prohibiting them in principle with some exceptions. If the acts of distribution enterprises fall within Article 14 of the Fair Trade Law and meets one of the requirements as set forth in Paragraph 1, Article 15 of the Fair Trade Law, it is necessary to obtain a prior approval from the Commission for such concerted actions.

Illustration for illegal concerted actions of distribution enterprises is exemplified as follows,

- (1) distribution enterprises jointly determine the retail prices or the purchase prices;
- (2) distribution enterprises jointly divide business areas;
- (3) Distribution enterprises, for the purpose of excluding or hindering the participation of third parties in the market, jointly require the suppliers not to supply to their horizontal competitors.

6. If a distribution enterprise, for the purpose of damaging a specific enterprise, prompts the suppliers not to supply to such specific enterprise, it may constitute a violation Subparagraph 1, Article 20 of the Fair Trade Law when there is

likelihood that the market competition would be therefore restrained.

If a distribution enterprise improperly demands that the suppliers that the purchase price or market sales price of a product which suppliers charged to other distribution enterprises shall not be lower than or equal to its own purchase price or market sales price of a product, or requires the suppliers to pay for the amount of the difference between the market sales price of other distribution enterprises charged for the same product, it is likely to restrain market competition and in violation Subparagraph 5, Article 20 of the Fair Trade Law.

If a distribution enterprise improperly restricts its trading counterparts (including the suppliers and counters) not to transact with its competitors of said distribution enterprise or otherwise it will not trade with them, terminate the present transactions, or alter the trading terms, it is likely to restrain market competition and in violation of Subparagraph 5, Article 20 of the Fair Trade Law.

- 7.** The deceptive and misleading advertisements cases regarding distribution enterprises shall in the first place be handled by the industry competent authorities in charge of regulating in accordance with the relevant laws and regulations. The Commission shall review them in accordance with Article 21 of the Fair Trade Law when such cases are not governed by industry regulations.
- 8.** If a distribution enterprise, for the purpose of securing opportunities for transactions, offers gifts or prizes but violates "Regulations Governing the Amount of Gifts and Pries Offered by Businesses", such conduct may be in violation of Article 23 of the Fair Trade Law.
- 9.** A distribution enterprise engaging in one of the following obviously unfair conducts that is sufficient to affect trading order, is likely to constitute an violation of Article 25 of the Fair Trade Law:
  - (1) failure to negotiate with the suppliers in advance to articulate clear and specific attributions or standards of inventory loss liability in writing, whereas faulting inventory loss liability to the suppliers without fully disclosing relevant supporting documents;
  - (2) failure to negotiate with its trading counterpart(s) (including the suppliers and counters, etc.) in advance to articulate clear and specific conditions or standards regarding products removal or withdrawal in writing, whereas improperly demanding its trading counterpart(s) to remove or withdraw products, or to change the trading conditions without fully disclosing relevant supporting documents;
  - (3) failure to negotiate with the suppliers in advance to articulate clear and specific attributions or standards of shortage liability in writing, whereas faulting shortage liability to suppliers without fully disclosing relevant

supporting documents;

- (4) taking advantage of the period of inventory shortfall, improperly increasing product orders or compounding the calculation of cumulative shortfall in pursuit of raising amount of penalty damage to be charged to the suppliers;
- (5) failure to negotiate with the suppliers in advance to articulate clear and specific conditions or standards of products return, whereas improperly returning of goods without fully disclosing relevant supporting documents;
- (6) a distribution enterprise engaging in any one of the following conducts, despite that such enterprise does not contravene the foregoing provision, would constitute improperly returning of goods unless there is any cause which can be attributable to the suppliers or the loss resulting from the returning of products is borne by the distribution enterprise:
  - (A) the distribution enterprise returns goods to the suppliers for the reasons that such goods are contaminated, damaged, expired which are not attributable to the suppliers;
  - (B) the distribution enterprise returns goods without due cause under the pretext of inventory adjustment, sale sites renovation, replacement of shelves, and so on;
  - (C) the distribution enterprise purchases a large amount of goods with low price during promotion period and returns the residual goods at the normal price after the promotion without any legitimate reasons and asks the suppliers to bear the spread loss;
  - (D) return of the distribution enterprise's own brand of good;
  - (E) return goods on the grounds of return of the goods by customers, and the cause for such return is attributable to the distribution enterprise;
  - (F) other types of return without any due causes.

**10.** A distribution enterprise charging additional fees from the suppliers under any of the following circumstances, is likely to be in violation of Subparagraph 5, Article 20 or Article 25 of the Fair Trade Law:

- (1) failure to consult with the suppliers in advance on the item, purpose, amount (or calculation standard), the merchandise sale promotion plan, and remedies for breach and other matters regarding additional fees while concluding with written agreements;
- (2) collection of additional fees by direct deduction of payment for goods without provision of details on deduction bills in advance;
- (3) other Conducts related to improperly charging additional fees:
  - (A) the fees charged are not directly related to promoting the sale of the goods;
  - (B) the fees charged are contributions to equipment, research and

development, or promotional activities which might be beneficial to the suppliers in promoting sale of goods or reducing operating costs, but the amount of the fees exceeds in value the tangible benefit that the suppliers may reasonably expect to derive from paying for such contributions;

- (C) the fees charged are for the sole purpose of achieving the distribution enterprise's own target figures or other accounting measures at the end of a fiscal year;
- (D) a reduction in the purchase price is demanded by the distribution enterprise for already-delivered goods despite the suppliers are under no obligation;
- (E) the fees charged for the same purpose and the same benefits generated but charge the suppliers for payment repeatedly under different items of additional fees;
- (F) in order to protect the minimum interest available to the distribution enterprise, the suppliers are required to pay a certain amount of additional fee, regardless of whether the actual sales amount of the suppliers has reached the forecasted sales amount;
- (G) fees are charged in a manner contrary to normal trading principles or commercial ethics.

**11.** In addition to the provisions described in these Policy Statements, distribution enterprises are advised to study and abide by the provisions specified in " Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 21 of the Fair Trade Law", "Fair Trade Commission Disposal Directions (Guidelines) on Comparative Advertising", "Fair Trade Commission Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights", and "Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 25 of the Fair Trade Law"

**12.** These Policy Statements merely describe and exemplify a number of types of conducts by distribution enterprises that often appear and may contravene the Fair Trade Law. The handling of individual cases shall be determined by the specific facts of each case.

